

Association For International Arbitration

# IN TOUCH

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New EU Directive on Mediation Conference.

CALL to register.

Have you registered yet?

Mediation by judges

- Ivan Verougstraete. President of GEMME

The New EU directive on mediation in the light of American Mediation.

- William E O'Brian Jr. Associate Professor of Law. Director, International Economic Law Masters Program University of Warwick

Application of the New EU Directive on Mediation.

- Mrs. Salla Saastamoinen. Head of Unit JLS.C.1 - Civil justice Directorate General Justice, Freedom and Security

Mediation, ADR and Legal Thinking.

- Frank Fleerackers. Dean of the faculty of law at the KUB

The Directive from the mediator's perspective and some thoughts on the problems surrounding mediation confidentiality

- Phillip Howell-Richardson. Mediator and Consultant at SJ Berwin LLP

We cordially invite you to this event that will take place on October 17<sup>th</sup> of 2008 at the Big Aula of the Katholieke Universiteit Brussel. Vrijheidslaan 17 1081 Brussels.

For the program and registration form please visit our website:

[http://www.arbitration-adr.org/activities/eudir\\_conf.html](http://www.arbitration-adr.org/activities/eudir_conf.html)

or contact us directly

Aura Soria de Karel

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[administration@arbitration-adr.org](mailto:administration@arbitration-adr.org)

Do not miss it; we look forward to seeing you there.

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### AIA's visit to Arbitration Commissions in China

A delegation of AIA( Hong Yang and Aura Soria de Karel) has recently returned from a journey throughout Eastern China visiting several Chinese arbitration commissions. They brought with them a bag full of warm welcoming words for the « Arbitrators of the West ».

AIA would like to express its gratitude to our hosts in China for their openness and reception.

The delegation from AIA came back with a real taste of Chinese hospitality, cuisine and friendship.

They visited 6 arbitration commissions:



- CIETAC
- Beijing Arbitration Commission
- Huizhou Arbitration Commission
- Shenzhen Arbitration Commission
- Guangzhou Arbitration Commission
- Xi'an Arbitration Commission

We anticipate a long term friendship with these Chinese Commissions and the crystallization of joint projects that were set on the table during the visit.

We look forward to the visit of Chinese delegation from various Commissions in China in the AIA's upcoming event concerning arbitration issues in China.

More information regarding the program, speakers, place and time of the event will be posted shortly.



## Recognition and enforcement of arbitral awards in Germany

Jan Kraayvanger, Mayer Brown LLP, Frankfurt, Germany

Recently, the Federal Supreme Court set aside a judgment of the Berlin Higher Regional Court which had rendered a foreign arbitral award enforceable in Germany. The place of arbitration had been Denmark. In the court proceeding before the Berlin court the defendant to the arbitral award had raised several objections against the enforceability of the arbitral award pursuant to Art. V para. 1 and 2 of the New York Convention. *Inter alia*, the defendant had claimed that the arbitral tribunal had lacked jurisdiction, that the subject matter of the arbitral proceeding was not arbitrable and that the arbitral tribunal had violated the requirements of due process. However, the Berlin court rejected examination of these objections as the defendant had failed to initiate court proceedings in Denmark to set aside the arbitral award. The Berlin court argued that the defendant acted against the principles of good faith because on the one hand it had not challenged the arbitral award in Denmark and on the other side it objected against the enforceability of the same award in Germany. The Berlin court regarded such behaviour as inconsistent and in consequence held that the defendant was precluded from challenging the enforceability of the arbitral award. These findings of the Berlin court suggested that the defendant to a foreign arbitral award could raise its defences under Art.V of the New York Convention only if it had already sought to set aside the arbitral award in the state of its origin. However, the Federal Supreme Court overturned this very enforcement- friendly approach of the Berlin court, ruling that the defendant's strategy was neither against the principles of good faith nor inconsistent. By refraining from court proceedings in Denmark to set aside the arbitral award the defendant merely waived the objection of Art.V para. 1 e); 2<sup>nd</sup> alternative, of the New York Convention. However, the defendant was not precluded from raising the other defences of Art.V of the New York Convention. Moreover, the Federal Supreme Court stated that there were legitimate reasons for a party not to challenge the arbitral award in the state of its origin. If, for example, the party had no assets in that state and hence did not have to fear enforcement of the arbitral award in the state of origin it was reasonable not to initiate expensive court proceedings at the place of arbitration. As a result of the Federal Supreme Court's decision a party is not precluded from challenging the enforceability of an arbitral award if it refrained from initiating court proceedings in the state of origin in order to set aside the award.

However, there might be one important exception to this rule: the Federal Supreme Court expressly left open the matter of whether a party is precluded from raising its objections if in the state of origin its objections are *time-barred*. The Court did not have to decide on this question because the Danish law applicable at that time did not provide for time limits. However, in two court decisions in the year 2006, the Higher Regional Court of the city of Karlsruhe ruled that the parties to an arbitral proceeding were precluded from raising

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## Call for articles

To be published in the  
coming journal  
Arbitration and  
Judication in China

objections pursuant to Art. V of the New York Convention if they had failed to raise these objections in a court proceeding to set aside the respective arbitral award in the state of origin and if such objections had been prescribed pursuant to the procedural law applicable in the state of origin. Hence, as a matter of precaution any party who intends to challenge the enforceability of a foreign arbitral award in Germany should challenge the award at the place of arbitration if the procedural law applicable at this place provides for time limits for raising the objections pursuant to Art.V of the New York Convention.

BGH RIW 2008, 474.

### Anglo-Hispanic Arbitration Club Completes A Successful First Year Davies Arnold Cooper LLP

The fourth quarterly meeting of the Anglo-Hispanic Arbitration Club took place on 11 September 2008 at the London office of international law firm Davies Arnold Cooper LLP. The working lunch session was chaired by Rowan Planterose, Managing Partner of Davies Arnold Cooper, and discussions were led by Hilary Heilbron QC of Brick Court Chambers and John Fordham of Stephenson Harwood.

Arbitration is considered by many, including a high proportion of General Counsel in leading multinational corporations, to be the preferred method of resolving disputes that have an international element. One of the most interesting developments in international arbitration has been the emergence of an Anglo-Spanish-Latin American triangle. It was thought there would therefore be great benefit in having an informal forum in which governments; companies, financial institutions and those involved in arbitration could discuss commercial and arbitration issues of interest to those in England, Spain and Latin America. The Club was launched on 3 December 2007 with the first annual cocktail party at Canning House (the home of the Hispanic and Luso Brazilian Council).

The first working lunch session of the Club took place in London on 13 March 2008. Following introductions from Danny Gowan, Senior Partner at Davies Arnold Cooper, discussions were led by Lord Daniel Brennan QC, a leading arbitration barrister at Matrix Chambers, and former chairman of the English Bar.

The next quarterly lunch of the Club took place at the Casa de América in Madrid on 9 July 2008. Discussions were led by Antonio Hernández Gil, Chairman of the Madrid Law Society; José María Chillón Medina, International Consultant and ICSID Arbitrator; and Hermes Marangos, Partner and Head of International, Davies Arnold Cooper.

The lunch on 11 September 2008 completed a successful year for the Anglo-Hispanic Arbitration Club. Hilary Heilbron QC led a discussion on arbitration awards, challenges and enforcement. John Fordham spoke about arbitrations and freezing injunctions, providing some insights from his recent work for the Republic of Bolivia and the Republic of Venezuela. Participants in the lunch session were drawn from leading chambers and law firms, and from such organisations as the British Council and the Risk Advisory Group.

Upcoming events

Open the Doors to Arbitration in China involving Latin America

International ADR India 2008

For more information please visit:  
<http://www.arbitration-adr.org>

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The next event of the Anglo-Hispanic Arbitration Club will be the Second Annual Cocktail Party at Canning House on 20 November 2008.

There is no formal membership required for the Anglo-Hispanic Arbitration Club, and the quarterly lunches and the annual cocktail parties are open to all on a first come, first served, basis. Enquiries, and suggestions on speakers and topics for discussion, should be sent to Steven Friel at Davies Arnold Cooper ([sfriel@dac.co.uk](mailto:sfriel@dac.co.uk)).

Open the Doors to Arbitration in China involving Latin America

Sponsored by Holland & Knight, Tinoco, Travieso, Planchart y Núñez and King & Wood, three leading law firms from the U.S., Venezuela and China. Organized in association with CIETAC (China International Economic and Trade Association), China's primary arbitral tribunal, and the Florida-China Association.

Cocktail Reception: Tuesday, November 11, 2008 6:30 - 8:30 p.m.

Kobe Club 404 Washington Ave Miami Beach, Florida

China-Latin America Arbitration Conference: Wednesday, November 12, 2008 8:30 a.m. - 5:30 p.m. The Ritz Carlton – South Beach 1 Lincoln Road Miami Beach, Florida

Registration fee: \$100. CLE pending.

For more information or to reserve attendance, please call 1.866.381.5324 or email [hkevents@hklaw.com](mailto:hkevents@hklaw.com)

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International ADR India 2008

9<sup>th</sup> -11<sup>th</sup> December 2008

Intercontinental Hotel, Mumbai, India

**India's most important international dispute resolution event**

Bringing together around 150-200 senior executives from India and overseas, drawn from large Indian and international corporate, domestic and international legal firms, and Indian advocates and judges, to discuss ADR in India and identify solutions for increasing its role in the Indian market.

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