Association for International Arbitration
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Inside this month's issue:

AIA Upcoming Events

The Association for International Arbitration is proud to invite you to its upcoming conference on

ADR in the Aviation Sector and the Sector of Tour Operators

LOCATION: HUB University, Stormstraat 2 Rue d'Assaut, 1000, Brussels

Room 6215

DATE: 24 June, 2011

Check the program, speakers and registration form at

www.aiaconferences.com

For further information regarding AIA conferences and trainings

please visit our website

www.arbitration-adr.org

AIA presents the European Mediation Training for Practitioners of Justice 2011

EMTPJ® European Mediation Training for Practitioners of Justice

After Last year's success, AIA is proud to announce the second EMTPJ course. EMTPJ is a two-week training program in cross-border civil and commercial mediation, sponsored by EU commission and organized by the Association for International Arbitration (AIA).

This year the course will take place from 5th to 17th September in Brussels, Belgium. It will be a 100 hour training program including the assessment day, which will cover the following essential areas: the stages in mediation process, analytical study of conflict resolution, theory and practice of EU and mediation acts, theory and practice of negotiation in mediation, International and cross – border mediation, the role of experts and counsel in civil and commercial mediation, theory and practice of contract law in Europe, interventions in specific situations and EU ethics on mediation.

For additional information and the registration form please visit: www.emtpj.eu

Report on the 3rd Corporate Fraud & Corruption Forum, Amsterdam, May 26-27, 2011

by Dilyara Nigmatullina

The 3rd Corporate Fraud and Corruption Forum organized by Thought Leader Global was held in Amsterdam on May 26-27, 2011. The event attracted heads and representatives of internal audit, compliance and legal departments for a lively discussion on effective fraud and corruption prevention strategies, cross-functional collaboration tools as an effective investigative resource, handling the difficult legal challenges in emerging markets and implementation of innovations protecting organizations from fraud and corruption.

The first day of the Forum commenced with the presentation of John Rijsman, Professor at Tilburg School of Social and Behavioral Sciences, who examined how to complement an extrinsic regulation with an intrinsic commitment. Mr. Rijsman provided a deep insight into psychological aspects of human behavior. People's reactions can vary depending on the degree of their involvement in an identical set of events. As selfishness can be found on the basis of each motivation, the non-involved observer and the involved actor approach one and the same situation differently.

Bernd H. Klose, attorney-at-law and insolvency specialist at the law office of Bernd H. Klose, elaborated on the recent developments in Ponzi schemes and asset tracing and recovery. Mr. Klose discussed in detail Ponzi schemes used by Bernard Lawrence Madoff and Robert Allen Stanford. He also gave an overview of specialized tools efficient in recovering assets, such as Mareva by Letter, Norwich Pharmacal Order and Anton Piller Order.

Charlie Monteith, former head of Legal and Operational Assurance at Serious Fraud Office, addressed the issues pertaining to implementation of the UK Bribery Act 2010 and prosecution trends in the UK and Europe. Mr. Monteith also spoke about risk management strategies, emphasizing the importance of a review of anti-corruption compliance programmes with the aim to continuously update corporate hospitality, anti money laundering and whistle blowing policies as well as due diligence procedures. Organizations should also identify risk areas, consider withdrawing from certain "high risk" regions and conduct effective due diligence with all third parties that render services to them or on their behalf.

The presentation of Simon Scales, Director of Global Investigations at TNT, addressed the language of interviewing. Mr. Scales concentrated in particular on the issues of cultural awareness, multi jurisdictional complications, handling whistle blowing, dealing with "information" and "evidence" appropriately and planning and preparing an interview.

David Kemp, Executive Director of Legal Policy at Autonomy, analyzed the ways to anticipate a new fraud as well as analytic challenges and solutions. Within the topic of his presentation Mr. Kemp discussed the challenges that have come with the new communication technology, increased regulatory and legal standards and powers of detection, the complexity of data protection rules and key components of fraud detection and deterrence. Additionally, some cases representing effective forensics analysis were reviewed.

The first day of the Forum concluded with the presentation on the Nestle anti-corruption training tool given by Stephan Mechnig-Giordano, Vice President of Compliance and Security at Nestlé Group. Nestle anti-corruption tool relies on four lines of defense with the ultimate control conducted by the Board of Directors and Audit Committee. The lines of defense are comprised of line management, corporate functions (involving Group Compliance, Group Risk, Regulatory, Legal, IP, Security, Quality Management, HR and Public Affairs), Nestle Group Audit reporting to Audit Committee and, finally, independent external auditors. Among Nestle's commitments against corruption and bribery are its Corporate Business Principles and Code of Business Conduct.

Kees van Ophem, General Counsel and VP at Leica Microsystems Group, was the first speaker to take the floor on the second day of the Forum. Mr. van Ophem covered in detail the following issues: economics of anti-bribery and the current enforcement environment, consequences of the industry being subject to an FCPA-investigation and lessons learned from the ongoing 2007 FCPA and related investigations of industry-wide medical devices. Additionally, examples of red flag practices were provided, which included congresses at resort places, donations, payments to foreign accounts, overlapping clinical studies, research grants to prop up a physician's own department and his status, donations to a physician's preferred charity and others.

Pedro Montoya, EADS Group Chief Compliance Officer shared the experience of EADS in building a compliance programme. The EADS Ethics and Compliance Programme Charter states that the EADS´ mission is to sustain global competitiveness, protect the group and serve its´ best interests through implementing high standards of individual and corporate integrity. The EADS Programme aims to improve risk assessment, integrity code and policies, compliance programmes as well as incident management systems by taking the following seven steps: defining standards, assigning high level personnel, adapting HR policies, communicating and training, follow-up auditing and reporting, defining and applying disciplinary system and updating standards and processes. Mr. Montoya underlined the importance of the Global Principles of Business Ethics for the Aerospace and Defense Industry jointly developed by the Aerospace Industries Association of America and AeroSpace and Defense Industries Association of Europe.

A deep insight into corporate governance in emerging markets was provided by Hesham Hamdy, GM and Chief Risk Officer at Arab International Bank. Mr. Hamdy gave a thorough analysis of the challenges and ways to improve risk manage-

ment, compliance, IT security and the efficiency of the audit committee within the topic discussed.

Jelle Niemantsverdriet, Principal Consultant of Forensics and Investigative Response at Verizon Business Security Solutions, illustrated the findings of a joint study with the US Secret Service, the 2010 Verizon Business Data Breach Investigations Report. The simple advice given by Mr. Niemantsverdriet to prevent data breach, was to focus on the basics, achieve essentials and then worry about excellence as many organizations achieve very high levels of security in numerous areas but neglect the security of other areas. Mr. Niemantsverdriet emphasized that in 63% of cases the cost of recommended preventive measures is cheap and in 33% it is intermediate. In the majority of cases, all that needs to be done is to monitor insiders, use the time efficiently, plan, prepare, test and work together.

Peter Leyman, Senior Manager at Deloitte Enterprise Risk Services, explained how to fight corruption and fraud by making the supply chain transparent. Physical security measures and the screening of business partners are two important measures that help to reduce the supply chain risk and create transparency in the supply chain. Physical security is comprised of the protection of buildings and the perimeter against illegitimate access. Reliable measures must be taken to prevent illegitimate access to shipping areas, loading docks and cargo areas (access control). Protection of goods and containers against theft, background checks of (potential) employees on important positions and awareness of employees of safety and security through education and communication are all security measures that can be taken to improve transparency. Additionally, it must be ensured that suppliers apply the same standards. Background checks should be performed on new and existing business partners to identify any issues that could damage the reputation and integrity of the company or that could represent an unacceptable risk to the business. All existing business relationships should be subject to ongoing monitoring, including scrutiny of transactions. Special attention is required for complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visibly lawful purpose.

Volker Weisshaar, General Counsel EMEA at NetApp, unpacked the topic of legal challenges for pursuing employees in a multinational environment. Mr. Weisshaar discussed in particular employment law and HR aspects of investigations, disciplinary actions and dismissals, data protection challenges, work councils and unions, legal aspects of interviewing and personal legal liability of the investigator. In order to achieve the objective of a transparent and objective investigation process it is important to involve HR, but to keep the direct manager out of the interview. It is advisable not to involve lawyers or other support functions which also are business partners of the affected employees but to be sure to have at least a second person at the interview for reasons of evidence. Depending on the regime, it might be necessary to engage a translator because language difficulties can cause additional legal challenges. Moreover, in some jurisdictions the interview has to follow a certain pattern, which might require the participation of a legal representative of the employing entity.

The last presentation of the Forum made by Christoph Lemser, Manager Data Analysis Support at Siemens, was dedicated to Corporate Finance Audit. Mr. Lemser started with the description of the Siemens audit organization, then moved to an analysis of structured and unstructured data and concluded his presentation with the assessment of the current situation and new approaches in process mining.

The quality of speakers and the diversity of approaches to the discussed issues highlighted innovative measures to create a barrier against fraud and corruption for organizations. A comfortable atmosphere fostered a lively discussion between the speakers and the audience, allowing for the opportunity to share experiences, which made the event very practical and productive.

New Procedural Rules for Arbitration-Related Matters in Ukraine

by Olena Perepelynska

In the beginning of 2011 the Ukrainian Parliament adopted a set of laws introducing amendments to the procedural legislation of Ukraine in arbitration-related matters. These laws have filled many gaps in Ukrainian legislation and are of practical importance for all engaged in arbitration in Ukraine.

Historical perspective

Ukraine has a long standing tradition of arbitration and was (as the USSR) one of the signatories to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, and European Convention on International Commercial Arbitration, 1961.

After becoming independent, Ukraine adopted special laws on international arbitration (in 1994) and on domestic arbitration (in 2004). Both laws were based on UNCITRAL Model Law 1985.

However, the development of procedural rules in support of arbitration for many years remained behind the development of Ukrainian arbitration law.

The Law of Ukraine *On [Domestic] Arbitration Courts* of 2004 superseded the "soviet" Regulation on Arbitration Court contained in Annex 2 of the Civil *Procedure Code of Ukraine* of 1963. At the same time, Ukrainian procedural legislation had not duly adjusted to the new arbitration laws. Nei-

ther the *Civil Procedure Codes of Ukraine* (1963, 2004), nor the *Commercial Procedure Code of Ukraine* (1991) contained specific provisions on the arbitration-related proceedings. And while recognition and enforcement of foreign arbitral awards in Ukraine were regulated by the Law of Ukraine *On Recognition and Enforcement of Foreign Courts Decisions* (in force within 2001-2005), the court proceedings relating to the arbitral awards made in Ukraine, both domestic and international, were not set forth.

Thus, for many years arbitration practitioners in Ukraine have been applying to the state courts to set aside or enforce the arbitral awards with reference to the arbitration laws only. Needless to say, the lack of procedural rules for such cases resulted in practical difficulties and uncertainty for the parties and even judges. The court practice in arbitration-related matters was rather controversial. The Supreme Court of Ukraine, the Highest Commercial Court of Ukraine and the Ministry of Justice of Ukraine made several attempts to improve this situation and to harmonize the court practice in such cases. The most notorious attempts were the Supreme Court Resolution No.12 of 24 December 1999, the Highest Commercial Court Recommendations No. 04-5/639 of 11 April 2005 and the Ministry of Justice letter No. 25-32/622 of 25 March 2005. However, none of them had a binding effect on the state courts and were applied only as guidance.

Procedural Reform 2011

In the beginning of 2011 the foregoing situation radically changed. On 3 February 2011 the Ukrainian Parliament adopted several laws introducing important amendments to the procedural legislation in arbitration-related matters, including:

- ⇒ *Law No.2979-VI*, in force since 1 March 2011, amending *Civil Procedure Code of Ukraine*;
- ⇒ *Law No.2980-VI*, in force since 1 March 2011, amending *Commercial Procedure Code of Ukraine*;
- ⇒ *Law No. 2983-VI*, in force since 10 March 2011, amending the Law of Ukraine *On [Domestic] Arbitration Courts*

These Laws set forth new procedural rules of enforcement and for setting aside of the arbitral awards (both domestic and international, if rendered in Ukraine), and address the arbitrability of certain types of disputes in Ukraine.

The amendments to the procedural codes are interrelated, since both commercial and general (civil) courts of Ukraine deal with arbitration-related matters. The controlling and supporting functions with regard to international arbitration remained with the general (civil) courts of Ukraine, while with regard to domestic arbitration those functions are, as earlier, divided between commercial and general courts depending on the legal status of the parties involved. The latter was the reason why *the Laws No. 2979-VI* and *No. 2980-VI* introduced similar rules on domestic arbitration-related matters in both *Civil Procedure Code of Ukraine* and *Commercial Procedure Code of Ukraine*.

Procedure of Arbitral Awards Enforcement

The Law of Ukraine *On International Commercial Arbitration* as well as the Law of Ukraine *On [Domestic] Arbitration Courts* set forth that a party seeking to enforce an arbitral award should obtain exequatur in a competent state court. In practice that means that such a party should file a respective motion for issuing a writ of execution to enforce the award. The competent state court shall consider that motion, check whether any grounds exist to refuse enforcement of the award and render a ruling which serves as a basis for issuing respective writ of execution.

The Procedural Reform of 2011 was meant to establish a procedure for domestic arbitral awards enforcement and to clarify the situation with enforcement of international arbitral awards made in the territory of Ukraine.

Domestic Arbitral Awards: *the Laws No. 2979-VI* and *No. 2980-VI* finally introduced procedural rules to *Civil Procedure Code of Ukraine* and *Commercial Procedure Code of Ukraine* on domestic arbitral awards enforcement.

International Arbitral Awards: According to *the Law No.2979-VI* the international arbitral awards made in the territory of Ukraine (*e.g.* by the International Commercial Arbitration Court and the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry), will be enforced in accordance with the provisions for granting permission to enforce foreign court decisions (Chapter VIII of Civil Procedure Code of Ukraine). This clarification supplements the last year's amendments to *Civil Procedure Code of Ukraine*, providing for application of its Chapter VIII to recognition and enforcement of *"foreign and international arbitral awards"*. New provisions aim to eliminate practical difficulties with enforcement of the awards of the International Commercial Arbitration Court and the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry caused by lack of uniform interpretation by the courts of the said notion.

Procedure of Setting Aside Arbitral Awards

Following the UNCITRAL Model Law 1985 approach, both Ukrainian arbitration laws provide for the possibility of setting aside an arbitral award made in Ukraine by the competent state court. They also contain exhaustive lists of grounds for setting aside arbitral awards and the terms for filing the respective application in the state court.

The Procedural Reform of 2011 aimed to fill the gap in the procedural legislation of Ukraine and to establish procedural rules for arbitration cases.

Domestic Arbitral Awards: *the Laws No. 2979-VI* and *No. 2980-VI* amended *Civil Procedure Code of Ukraine* and *Commercial Procedure Code of Ukraine* with special provisions on the procedure and conditions for setting aside domestic arbitral awards. The latter develops respective provisions of the Law of Ukraine *On [Domestic] Arbitration Courts*. It determines the procedure for considering the cases on setting aside domestic arbitral awards, including its timeframe (1 month), as well as the requirements concerning the court decisions in such cases.

International Arbitral Awards: *the Law No.2979-VI* also contains several provisions on setting aside international

arbitral awards made in the territory of Ukraine. Their complex interpretation gives rise to presume that, the new procedure will be applied to such awards. However, the conditions and grounds for setting aside the international arbitral awards shall be regulated, as earlier, exclusively by the Law of Ukraine *On International Commercial Arbitration* and/or by the respective international treaties of Ukraine.

New Arbitrability Rules

The Procedural Reform of 2011 has also covered issues of the arbitrability of certain types of dispute.

Domestic Arbitration: *the Law No. 2983-VI* extended the list of non-arbitrable disputes contained in Article 6 of the Law of Ukraine *On [Domestic] Arbitration Courts.* It referred the cases on protection of the consumers' rights (including the consumers of services of banks and credit unions) to the category of cases which cannot be referred to the domestic arbitration court for resolution.

International Arbitration: *the Law No.2980-VI* introduced minor amendments to Article 12 of the *Commercial Procedure Code of Ukraine.* Prior to the Procedural Reform of 2011 this article contained restrictions and prohibited the submission of certain categories of disputes (first of all, corporate disputes and public procurement contracts disputes) to both domestic and international arbitration. The new wording of this article and its new domestic arbitration context may provoke discussions of its applicability to international arbitration.

The provisions of both laws on arbitrability raise certain concerns. The imperfect wording of the said laws provides an opportunity for ambiguous interpretation of their provisions. Only with progression of time and through formation of court practice in this regard will real meaning and significance of these provisions for arbitration in Ukraine be established.

Review of the statute '**People's Mediation Law of the People's Republic of China**'

by Jinghua Zhang

Introduction

On August 28, 2010, the president of the People's Republic of China promulgated a new national statute 'People's Mediation Law of the People's Republic of China'. The act was drafted by the Standing Committee of the National People's Congress and came into force on January 1, 2011. This article is structured in three parts: China's current mediation situation, the innovations of the new mediation statute and its drawbacks.

Current situation of mediation in China

It has been a long-standing tradition in China to use mediation to resolve disputes. It is this tradition that makes the Chinese system, known globally as "the eastern experience", so unique. It is important to understand that the Chinese tradition of mediation is founded on the culturally predominant values of the Chinese society, such as harmony, avoidance of disputes, willingness to negotiate. The mediation system is widely used on a local level as it helps to maintain good relationships. There are more than 820,000 mediation commissions and 494,000 mediators in China. Millions of disputes have been settled by the mediation commissions all over China. Mediation in China falls into several categories: people's mediation, administrative mediation, institutional mediation, mediation within litigation proceedings and mediation within arbitration proceedings.

The innovations of the new mediation statute

The statute is comprised of six chapters, starting with "General Provisions," followed by "People's Mediation Commissions," " People's Mediators," " Mediation Proceedings," " Mediation Agreement," and "Supplementary Provisions." The main role of the statute is to consolidate the regulation of mediation as a public, autonomous and unofficial dispute settlement procedure. There are four innovative ideas in the statute.

First, it establishes the organizational structure of the People's Mediation Commissions. According to the statute, four types are possible: commissions set up by villagers' committees, neighborhood committees, enterprises and public institutions. If it is necessary, villages, towns, districts, social and other organizations may also form people's mediation commissions. As the vice minister of the Ministry of Justice, P.R.C. Chiyong Hao said, "different forms of mediation commissions adapt to resolving different types of disputes in different areas."

The second innovation is the regulations concerning "People's Mediators." The objective of the provisions about mediators´ qualifications, selection, code of conduct and measures protecting them contained in the third chapter of the statute, is to improve the professional level of mediators. The statute provides subsidies for the time that a mediator spends on mediation and compensation if a mediator is injured or disabled in the process of doing the mediation work. Historically mediators have not been compensated for their work. In accordance with article 16 of the statute, it is the local government that must lend financial support to mediators.

The third innovation is an increased flexibility of mediation, which helps to avoid excessive formalization. The parties to a dispute may apply to a people's mediation commission for mediation. At the same time a people's mediation commission may also offer mediation on its own motion. Based on the needs of each particular case, a people's mediation commission may designate one or more people's mediators, or the parties concerned may select one or more people's mediators. Disputes will be mediated in a timely manner and at once in order to prevent their intensification.

As the fourth innovation, the new statute establishes a system which guarantees compliance with the agreement resulting from mediation. Thus, it permits the oral form of mediation agreements and determines the time when such agreements become effective. A mediation agreement resulting from mediation is binding on all the parties concerned, and the people's mediation commission shall ensure the fulfillment of the mediation agreement and urge the parties concerned to honor their obligations as per the agreement.

Drawbacks of the new statute

According to many authorities, mediation in China became a predominant practice due to its historical, cultural and political background. The new statute is definitely a success, but it has a few drawbacks.

Before the enactment of the new statute, there were various regulations related to people's

mediation that had been systematically confused. Article 9 of The Provisional Organic Rules of People's Mediation Committees (1989) provides that: an agreement resulting from mediation should be voluntarily performed. If parties fail to reach an agreement through mediation, or an agreement is repudiated after being reached, both parties may ask the grassroot governments' judgment or bring a lawsuit to the people's court. The Civil Procedure Law (2007) calls for a different procedure. Article 16 says that the People's Mediation Committees shall conduct all mediations according to legal provisions and the principle of voluntariness. All parties concerned shall voluntarily perform the mediation agreement. Where any of the parties concerned refuse to participate in mediation, or if both parties fail to reach a mediation agreement, or if one party does not comply with the agreement resulting from mediation, legal proceedings can be initiated at a people's court. The new mediation statute provides in article 32, "Where, after a mediation agreement is reached upon mediation, the parties concerned have a dispute regarding the fulfillment or contents of the mediation agreement, they may bring a lawsuit to the people's court." The disadvantage of article 32 is that it allows the parties to initiate several lawsuits in respect to one and the same case. In the past only a few mediation cases had to be consequently referred to courts. Out of 7 million mediation cases in 2009, only 0.7% was brought to court afterwards. But in light of the changes described above, the percentage of mediation cases referred to court could foreseeable increase.

Additionally, the new statute provides in article 33 that after a mediation agreement is reached, when necessary, the parties concerned may jointly apply to the people's court for judicial confirmation within 30 days after the mediation agreement becomes effective, and the people's court shall examine the agreement and confirm its effect in a timely manner. There are two possible outcomes after the court's examination. If the people's court confirms the validity of the mediation agreement, one party may apply to the people's court for enforcement if the other party refuses to perform or fails to fully perform it. If the people's court confirms that the mediation agreement is invalid, the parties concerned may alter the original agreement, reach a new agreement through people's mediation, or bring a lawsuit to the people's court. However, the initiation of the judicial confirmation is limited by one condition; such proceedings can take place only if both parties jointly apply for them. Another drawback of the statute is that it does not contain details regarding the procedure applicable by courts for the review of agreements resulting from mediation in the proceedings of judicial confirmation. But in practice, most commonly the courts use the summary procedure.

Russian courts misinterpret provisions of the New York Convention

by Dilyara Nigmatullina

(also published at www.cisarbitration.com)

Misinterpreting article V(1)(c) of the New York Convention, Russian courts engaged in re-examination of the award on the merits.

Article V(1)(c) of the New York Convention sets forth one of the grounds for refusing recognition and enforcement of an award, in particular, if it contains decisions outside the arbitral tribunal's authority. In accordance with scholarly literature and case law, Article V(1)(c) is applicable where the matters resolved by an award either exceeded those presented by the parties to the tribunal in the arbitration, or the award failed to address the matters that were submitted to the tribunal.

However, challenges to awards based on objections to the arbitrators' substantive contract interpretations are usually regarded as not constituting a true Article V(1)(c) defense and consequently such objections are dismissed. For example, the Spanish Tribunal Supremo, in its Judgment of 4 March 2003 rejected a challenge to recognition under Article V(1)(c) because the award debtor did not claim excess of authority but disagreed instead with the substance of the arbitrator's determination. The following case where a foreign award has been examined twice by two levels of Russian courts shows that there is still a misunderstanding within the Russian judicial system as to how to apply provisions of the N.Y. Convention.

The Austrian seller, Hipp GmbH & Co. Export KG (hereinafter "Hipp GmbH"), applied to the Commercial Court of the City of Moscow seeking enforcement of the award rendered on August 19, 2009, by the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (hereinafter " VIAC") against Russian buyers, LLC "SIVMA. Infant food" & CJSC "SIVMA". The Russian parties objected to recognition and enforcement of the award relying on Article V(1)(c) of the N.Y. Convention. On March 25, 2010, the City Court refused recognition and enforcement of the award because, in its view, VIAC had incorrectly identified the contract which gave rise to the dispute.

The parties involved in the dispute had concluded several contracts:

a) contract of sale and delivery N 01/2000 between Hipp GmbH and LLC "SIVMA. Infant food" of September 11, 2000, valid until March 15, 2002 (hereinafter "contract N 01/2000");

b) contract of sale and delivery N 01/2001 between Hipp GmbH and LLC "SIVMA. Infant food" of July 01, 2001, annually renewed and valid until December 31, 2007 (hereinafter "contract N 01/2001");

c) exclusive distribution agreement between Hipp GmbH and LLC "SIVMA. Infant food" of July 6, 2005 (hereinafter "distribution agreement");

d) guarantee of November 06, 2006, whereby CJSC "SIVMA" agreed to be joint-and-severally liable to Hipp GmbH for the obligations of LLC "SIVMA. Infant food" resulting from delivery of goods (hereinafter "guarantee").

The distribution agreement and guarantee contained almost identical arbitration clauses providing for resolution of all disputes under the VIAC Rules. Under article 8 of contract N 01/2001, all disputes of the parties had to be referred to "the Arbitration court of the seller's state".

Because, according to the City Court, Hipp GmbH's claims arose out of contract N 01/2001 and not out of the distribution agreement as found by VIAC, VIAC did not have jurisdiction over the dispute. Since VIAC lacked competence to resolve the dispute in respect of the first respondent, LLC "SIVMA. Infant food" it did not have jurisdiction over the second respondent, CJSC "SIVMA," either. Moreover, the City Court continued to say that under the guarantee the second respondent stood as guarantor for the first respondent's

obligations under contract N 01/2000, which expired on March 15, 2002. Because at the time when the guarantee was concluded the underlying relationship between the parties had already ceased to exist, the guarantee in respect of the expired obligation was invalid. Therefore, the City Court concluded that the VIAC award dealt with a difference not falling within the terms of the submission to arbitration.

Hipp GmbH not surprisingly appealed, and the lower court decision was overturned by the Federal Commercial Court of the Moscow Region on May 27, 2010. The Federal Court indicated that VIAC had already determined that two contracts had to be considered for the case at hand: contract N 01/2001 and the distribution agreement. Since those findings pertained to the substance of the dispute, and by virtue of article 243(4) of Commercial Procedure Code of the Russian Federation and para 20 of the Information Letter of the Presidium of the Supreme Commercial Court of the Russian Federation No. 96 of December 22, 2005, the City Court lacked lawful grounds to revise the award.

As for the finding of the lower court that it did not have jurisdiction over the second respondent, the Federal Court added that the City Court failed to take into account the fact that the guarantee contained an article 4.1 providing for the resolution of all the disputes at VIAC under its Rules. As the City Court had not examined all the circumstances of the case, the Federal Court vacated the lower court's decision and remanded the case for reconsideration.

The same judge at the City Court reconsidered the case, but ignoring the Federal Court's request not to revise the award on the merits, conducted such an examination. And based on violation of public policy and article V(1)(c) of the N.Y. Convention, the City Court again refused recognition and enforcement of the award.

Even more surprising is the fact that when Hipp GmbH appealed for the second time, the Federal Court, composed of judges other than those who heard the first appeal, upheld the refusal of recognition and enforcement of the award by the first instance.

Now the case has been transferred to the Supreme Commercial Court of the Russian Federation where the hearing will take place on June 14, 2011. Hopefully, the Supreme Commercial Court will clarify the meaning of Article V(1)(c) of the N.Y. Convention so that in the future, objections to award recognition and enforcement based on arbitrators' substantive contract interpretation, raised under this article, do not have a chance to succeed in Russian courts.

BELMED: looking for a solution on the internet

The mission of the Belgian Federal Public Service Economy (hereinafter "FPS Economy") consists of creating the conditions necessary for the competitive, sustainable and balanced functioning of the goods and services market in Belgium. The FPS Economy is well aware of the fact that having an easy way to resolve disputes out of court can stimulate the goods and services market. In order to achieve this goal, the FPS Economy launched a new electronic platform for consumer dispute resolution on 6 April 2011 called BELMED (the name BELMED is the result of a contraction of the words Belgium and mediation).

By creating BELMED, the FPS Economy provides consumers and companies with a secure space to solve their issues out of court with the help of professional mediators. Five ADR bodies have signed a cooperation protocol with the FPS Economy: the Ombudsman Service for Energy, the Mediation Service for Banks-Credit-Investments, the Second-hand Vehicle Reconciliation Commission, the Travel Disputes Commission and the European Consumer Centre.

The disputes handled by the platform deal with commercial relationships between a consumer located in one of the Member States of the European Union and a company registered with the Belgian Crossroad-Bank for Enterprises. This means that some cross-border disputes can also be taken care of. These are some examples of disputes that can be submitted:

- My electricity supplier sends me a formal notice to pay even though I have provided proof of payment.
- I live in London and despite many reminders, the books I ordered from a publishing house in Antwerp have still not been delivered.
- The hotel in which I spent my vacation is 2 miles away from the beach while the travel agency's brochure stated 'with a view of the sea.'

Disputes between private individuals or between professional sellers are not handled by BELMED.

The FPS Economy does not interfere in the handling of the files. The department only puts the instrument at the users' disposal and makes sure that the mediators respect the principles applicable to consensual consumer dispute resolution further to Commission recommendation 2001/310/EC of 4 april 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes, that is: impartiality, transparency, efficiency and equity. With the statistics that are anonymously and automatically drawn up, the FPS Economy will analyse the consumer markets and detect the issues so as to provide authorities with data that will enable them to improve the functioning of the market.

Bearing the digital divice in mind, the FPS Economy has also insisted on forming partnerships with the Public Computer Rooms intended to help users who do not have easy access to the internet.

With this instrument, the FPS Economy wants to help reinforce the consumers' trust in the goods and services market and encourage SMEs to invest more money in cross-border electronic commerce. This policy is in keeping with the European Commission's desire to boost the Single Market.

Speed, confidentiality and moderate costs are the assets of online mediation.

To discover Belmed visit http://belmed.fgov.be.

Paris - the Home of International Arbitration

In October 2010, Michel Prada, the Honorary Inspector General of Finances, was commissioned by the French Government to strengthen and consolidate Paris's position at the heart of the world of international arbitration. As part of his mission, on 19 April 2011, he delivered a consultation paper "Certain considerations on the strengthening of the legal competitiveness of the city of Paris" to the Ministry of Justice and the Ministry of the Economy, Finance and Industry. The paper, and the proposals for reform which it recommends, are open for consultation until 20 May 2011. Responses to the paper will be discussed at a round-table in June 2011.

Mr. Prada's paper discusses three issues concerning international arbitration in Paris: (i) the risk of the ICC's possible relocation, (ii) the quality and attractiveness of the legal environment, and (iii) the influence and coherence of the community, including the tools it uses to promote itself.

On the ICC, although it appears that the organisation has decided to stay in Paris, Mr. Prada suggests that the handling of the discussion surrounding its possible relocation demonstrated that France does not have a sufficiently competitive system for attracting and maintaining the presence of international private law non-governmental organisations.

On quality and attractiveness, Mr Prada observes that Paris is a very attractive place for international arbitration. He remarks on the significance of recent legislative reforms in France, including the new French arbitration law of 13 January 2011 (Decree No. 2011-48) and the positive effect these reforms have had on the way in which the French legal system deals with arbitration. Mr. Prada also discusses the recent *INSERM* case and the confusion it has caused regarding the involvement of public law bodies in international arbitration.

Mr. Prada also calls upon public authorities and those working in international arbitration in Paris to promote the city's advantages. To achieve this, Mr Prada calls upon the community to collaborate in forming a single organisation for the promotion of arbitration in Paris. One of Mr. Prada's specific recommendations is that a single website be created to provide information on international arbitration in Paris.

Mr Prada's report notes the role of *Paris, the Home of International Arbitration,* together with the Comité Français de l'Arbitrage and the International Arbitration Institute, as organizations that advance the place of Paris as a center for international arbitration. *Paris, the Home of International Arbitration*, which recently launched its website specifically to promote arbitration in Paris, hopes that all actors in the Paris arbitration community will continue their active involvement in the association's activities and will continue to contribute content and ideas to the association's website.

AIA Recommends to attend

SUCCESS OF ARBITRATION (AS THE RESULT OF PROPER CHOICES) AND THE ART OF MEDIATION

The European Court of Arbitration and the Mediation Centre of Europe, the Mediterranean and the Middle East organise this year their annual international event at Villa Canossa (between Venice and Treviso) on September 30, 2011 (conference) and October 1, 2011 (tour and social).

The conference will addresse and discuss in English and Italian the following topics :

⇒ Notion of International Arbitration
Speaker : Jorge Angell

⇒ Issues to be Covered in the Arbitration Agreement
Speaker : Alexander Marquardt

⇒ Criteria to Select the Arbitrator
Speaker : Prof. Thomas Clay

⇒ One or More Arbitrators ?
Speaker : Prof. Miguel Virgos

⇒ Remedies Against the Arbitral Award
Speaker : Mauro Rubino-Sammartano

⇒ The Role of the Sharia
Speaker : Prof. Jacques El-Hakim

⇒ The Great Role of Mediation
Speaker : Jeremy Ferguson

⇒ Mandatory Mediation : Lights and Shadows
Speaker : Federico Antich

⇒ The Psychological Aspects
Speaker : Prof. Paolo Nicosia

⇒ Inaugural Speech of the International School of Arbitration and Mediation of the Mediterranean and the Middle East
Speaker : Mauro Rubino-Sammartano

On that occasion the Euro-Arab Dialogue Committee will meet to discuss which should be the remedies against awards.
The second day in Venice will include a tour of this unique city and social events.
The programme is on the site of the European Court of Arbitration.
www.cour-europe-arbitrage.org