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AIA Upcoming Events

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

Intensive International Arbitration Training Program

with the particular focus on India

AIA in association with the Nani Palkhiwala Arbitration Center, India will conduct the training in Chennai, Tamil Nadu, India.

The course will consist of multiple sessions which are scheduled on consecutive weekends for the entire month of March 2012.

Further details regarding the training will be available from January 15, 2012 on AIA website www.arbitration-adr.org

and

European Mediation Training For Practitioners of Justice

LOCATION: Brussels, Belgium

DATE: September 3-15, 2012

Further information will soon be available at www.emtpj.eu

The (Limited) Jurisdiction of ICSID Arbitral Tribunals

by Semir Sali

1. Introduction

According to international law, the notion of jurisdiction is, as a matter of principle, unlimited within the state territory. It follows that foreign investors, once entering the state, become subject to the full jurisdiction of that state. Traditionally, the only means available to foreign investors in order to protect their investment from states' abuses was through diplomatic protection, based on the *Mavrommatis Palestine Concessions* (PCIJ, (Ser. A), No. 2, Judgement of 30 August 1924) case. Such a method had major drawbacks, mostly because of the absolute discretion of originating states, that in order to avoid any political repercussions, were usually reluctant to initiate legal proceedings against host states. Indeed, on the rare occasions when diplomatic protection of investors was sought, the underlying reason had been more related to the state's foreign policy, rather than to the protection of its citizens' rights.

To the contrary, international investment arbitration has the positive effect of (i) de-politicizing investment claims, (ii) affording protection by filling a procedural gap through a suitable forum and (iii) attracting foreign investments.

As in other dispute settlement mechanisms, investment arbitration is made possible only through consent of the parties. Such consent provides for limitations of the sovereignty of host countries and is usually given in three ways: by introducing a consent clause in a direct contract with the investor, by domestic legislation or by an International Agreement between the host state and the investor's state of nationality, usually through a Bilateral Investment Treaty ("BIT").

According to Article 25 of the International Centre for Settlement of Investment Dis-

putes ("ICSID") Convention, the Centre shall have jurisdiction to (1) any legal dispute (2) arising directly out of an investment (3) between a Contracting State and a national of another Contracting State (4) which the parties consent in writing to the Centre.

2. Types of jurisdiction under the ICSID Convention

2.1 Ratione Materiae

The subject-matter jurisdiction comprises the first two conditions set forth by Article 25. It relates to the objective nature and qualification of the dispute.

Firstly, such dispute must be justiciable and not merely of a general character. In this respect ICSID Arbitral Tribunals ("AT") have usually relied on the work of the International Court of Justice ("ICJ"), defining a dispute as "a disagreement on a point of law or fact, a conflict of legal views or interests between parties". Therefore, the AT should establish the existence of a (1) dispute, (2) which is a legal one.

Secondly, such a legal dispute must arise directly out of an investment. The 'investment' condition is the cornerstone of the ICSID jurisdiction since it limits the consent of the parties exclusively with respect to foreign investment and no other matters whatsoever. However, a definition of the term 'investment' is nowhere to be found in the Convention. Such an omission has been justified by either appealing to the consent of the parties (Report of the Executive Directors), or to flexibility, in order to allow adaptation to innovative patterns of investment that were not foreseen at the time of the drafting (M. Hirch). But the reason might have well been more simple, namely because of the failure of the parties to reach an agreement on the definition during the drafting of the Convention (C.Schreurer).

Needless to say, ATs often disagree on which conditions should be met in order for a certain transaction to be qualified as an investment under the scope of the Convention. Usually, two types of tests contend the issue: the objective and subjective one. The objective test is mostly confirmed in the landmark case, *Salini Costruttori S.p.A. and Italstrade S.p.A v. Kingdom of Marocco* (ICSID Case No. ARB/00/4, Decision on Jurisdiction of 23 July 2001), where certain elements are required, such as contribution, duration of performance of the contract, participation in the risks of the transaction and contribution to the economic development of the host state of the investment. Such criteria, influenced by the work of Professor Christoph H. Schreuer, soon emerged, contrary to the author's position, from as "merely typical characteristics of investments", to mandatory requirements for ATs. This restrictive approach was criticized, among others, by Schreuer himself, who described the development as 'unfortunate' and that his 1st Edition of the Commentary "cannot serve as authority". Nevertheless, ATs still consider the *Salini* test as authoritative for their decisions. In *Global Trading Resource Corp. and Globex International Inc. v. Ukraine* (ICSID Case No. ARB/09/11, Award of 1 December 2010), the AT stated that:

> [T]hese decisions have held that the notion of 'investment', which is one of the conditions to be satisfied for the Centre to have jurisdiction, cannot be defined simply by reference to the parties' consent. The weight of authority is thus in favour of viewing the term 'investment' as having an objective definition within the framework of the ICSID Convention.

Ultimately, the objective definition has both advantages and disadvantages. On the one hand, ATs can contribute to the legal certainty and act as guardians of the ICSID Convention by denying any potential circumventing of the 'investment' nature of claims brought by parties. On the other hand, applying rigid requirements such as the "economic contribution of the investment to the host state" could have adverse effects and sometimes result in denial of justice. For example, in the *Patrick Mitchell v. Democratic Republic of the Congo* (ICSID Case No. ARB/99/7, Decision on the Stay of Enforcement of the Award of November 30, 2004), relating to the destruction of the claimant's law firm by Congolese forces, the *ad hoc* annulment committee held that Mr. Mitchell's business did not involve a "readily recognizable" investment and it was therefore, not to be considered as a foreign investment.

The subjective test is less popular among ATs. Only two decisions, namely the *Malaysian Historical Salvors, SDN, BHD v. Malaysia* (ICSID Case No. ARB/05/10, Decision on the Application for Annulment of 16 April 2009) and the *Biwater Gauff Ltd. v. United Republic of Tanzania* (ICSID Case No. ARB/05/22, Award of 24 July 2008) have rejected the *Salini* test, thus calling for a more flexible approach. As a result, a margin of freedom of consent is allowed to the parties, by assessing the existence of 'investment' on the basis of the definitions provided in their own agreements, mainly through BITs. However, this does not mean that an absolute freedom is left to the parties since the ATs need to establish the link between the term 'investment' in Article 25 and the term 'investment' in a treaty. As correctly stated in the *Alcoa Minerals of Jamaica, Inc. v. Jamaica* (ICSID Case No. ARB/74/2, Decision on Jurisdiction and Competence of 6 July 1975), although consent of the parties is given considerable weight, such a factor is not decisive in relation to the character of the transaction. Douglas points out to a hypothetical example of a metro ticket listed as an investment asset under a treaty and the corresponding obligation of an ICSID tribunal to decline juris-

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diction in such case since the parties would have transcended from the ordinary meaning of the term investment.

Finally, one must distinguish between treaty claims and contract claims. Although in practice such claims might overlap, the distinction remains important in that only the former can trigger the Centre's exclusive jurisdiction. The principle was enshrined in the *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic* (ICSID Case No. ARB/97/3, Decision on Annulment of 3 July 2003) and *SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan* (ICSID Case No. ARB/01/13, Decision of the Tribunal on Objections to Jurisdiction of 6 August 2003) cases. However, in *SGS Société Générale de Surveillance S.A. v. Republic of the Philippines* (ICSID Case No. ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction of 29 January 2004) the AT took a different approach. Despite finding the claim inadmissible, it explicitly rejected the *SGS v. Pakistan* reasoning by extending its jurisdiction to contract claims.

2.2 *Ratione Personae*

The ICSID jurisdiction is further restricted with regard to the parties to the dispute. Article 25(1)(2) envisages only two parties: the host state (or any constituent subdivision or agency of a the state designated to the Centre by that state) and a private foreign investor, either natural or juridical person. Thus, it follows that the dispute must arise between a (host) State and a (natural or juridical) foreign person, where both the host and investor's state must be party to the Convention. This last requirement is justified by the need to ensure effectiveness and prevent free riders who might enjoy benefits from the application of the Convention while not having any obligation from it. However, in cases with more actors, for example when a foreign investor enters in a joint-venture with another third-state, the latter is precluded from the application of the Convention. Efforts of drafters to include provisions allowing a third-state in the dispute were firmly rejected on the basis of the neutral and apolitical nature of the Centre. While there are fewer problems with regard to the state definition, issues arise in relation to the nationality of the natural or juridical person.

With respect to natural persons, mere 'convenience' nationalities are disregarded pursuant to the *Nottebohm* principle (ICJ Rep, 1955). Contrary to modern diplomatic protection, dual nationality also precludes jurisdiction, even in case of 'effective nationality'. In addition, the foreign nationality must remain the same not only during the time when consent between the parties was reached, but also when the request for arbitration was made.

As for juridical persons, ATs have adopted formal approaches. In *Tokios Tokelės v. Ukraine* (ICSID Case No. ARB/02/18, Decision on Jurisdiction of 29 April 2004), a Lithuanian corporation owned in 99% by nationals of Ukraine was allowed jurisdiction against Ukraine under the Ukraine-Lithuania BIT. The majority held that, in absence of a specific 'control test', general rules of international law apply, thus attributing corporate nationality to the state where the corporation was incorporated. Despite the fierce dissenting opinion of the AT President Prof. Weil, to focus on the actual origin of the control, there are no signs to believe that a *revirement* will happen in the future. While it is persuasively argued that the 'flexible approach' could undermine the efficiency of the Centre by requiring ATs to make difficult assessments regarding the nationality status of the claimant corporation and therefore affecting principles of predictability and stability (C. McLachlan QC, L. Shore & M. Weiniger), one can still argue that the formal approach will erode the very nationality requirement, by *de facto* allowing jurisdiction over non-foreign investors.

Overall, it is quite commendable that the number of BITs increased from 300 by 1990, to over 2750 by the end of 2009. As a consequence, the number of arbitration awards before the ICSID ATs has experienced a considerable increase, transforming investment arbitration from an "arcane business, to the attention of the world's most influential law firms, political activists and governments" (P.M. Blyschak). Investors need no more to hope on the political discretion of their state of origin to seek redress of damages caused by host countries to their investments. They are protected by clauses such as the Most Favoured Nation Treatment ("MFN"), National Treatment, Fair and Equitable Treatment, Umbrella Clauses and those against Expropriations. Like human rights treaties, ICSID arbitration provides for direct enforcement of these individual rights without the need of the originating state acting as an intermediary. Unlike human rights treaties, only a certain category of persons, usually corporations or wealthy individuals can appear before the Investment Arbitral Tribunals. However, in the recent much debated *Abaclat and others (frm. Giovanna a Beccara and others) v. Argentine Republic* (ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility of 4 August 2011), the majority allowed a massive collective claim brought under the Italy-Argentina BIT, on behalf of several associations representing 60.000 bond holders which were left unsatisfied from the 2001 Argentinean default. But it is still very doubtful whether ATs have the necessary jurisdiction to entertain such claims under the ICSID Convention or whether sovereign debt instruments can be classified as 'investment' under both the Convention and the BIT (Dissenting Opinion of Prof. Georges Abi-Saab).

3. Application of MFN Clauses as tools to extend jurisdiction

The issue whether MFN clauses can be extended to dispute resolution protections is one of the most debated at the moment, especially in light of the recent *Hochtief AG v Argentine Republic* (ICSID Case No. ARB/07/31, Decision on Jurisdiction of 24 October 2011) *and Impregilo SpA v Argentine Republic* (ICSID Case No. ARB/07/17, Award of 21 June 2011) cases and the respective dissenting opinions of J Christopher Thomas QC and Professor Brigitte Stern, warning for the adverse effects that this practice might bring to investment arbitration. While the *Emilio Agustin Maffezini v. Kingdom of Spain* (ICSID Case No. ARB/97/7, Decision on Jurisdiction of 25 January 2000) AT persuasively adopted the *ejusdem generis* principle in order to extend its jurisdiction and apply another BIT more favourable to the Claimant, it still emphasized that the MFN clause cannot be invoked in presence of 'public policy' limits, such as to exhaustion of local remedies of fork-in-the-road clauses. Furthermore, in *Maffezzini*, the AT relied heavily on the "all matters" indication included in the Spain-Argentina BIT. By contrast, in none of the abovementioned cases did the BIT include reference to "all matters", so that to infer that the MFN clause included in the BIT could be extended not only to substantial claims, but even to procedural ones. The risk with such interpretation is that state consent is being *de facto* circumvented. Indeed, what is mistakenly taken for granted may in the future become a boomerang, undermining the necessary basis of jurisdiction. Other states may follow Bolivia's decision in 2007 to withdraw from the ICSID Convention, especially in South America, where the Calvo Doctrine holds that international investors need only be afforded the same rights as other nationals and not more. Therefore, arbitrators should carefully consider these issues before it is not too late to compromise a very effective system of dispute settlements.

4. Conclusion

In light of the above, it can be inferred that limiting or broadening the jurisdiction of the Centre directly affects the rights of both parties. However, the ICSID jurisprudence still remains conflicting and confusing on the issue. This is partly because the extent of the jurisdiction is usually determined by the ATs which seem to have a broad discretion on restricting or broadening such jurisdiction. In similar cases, the optimal solution could be sought by adopting a system of precedents, or unifying jurisprudence. Unfortunately, that option is quite unattainable, considering the *ad-hoc* nature of ICSID ATs. *Quid iuris* then? When dealing with relatively new fields of law such as investment arbitration, the writings of the legal doctrine are, as was shown above, quite influential to the practitioners. Indeed, only a unified position of the most influential scholars of the field can 'direct' ATs towards a settled jurisprudence. After all, the teachings of the most highly qualified publicists are still a valid and valuable (subsidiary) source of law in international law.

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On October 22, 2010 AIA hosted a conference on contemporary issues in investment arbitration. The materials of the conference can be consulted at http://arbitration-adr.org/activities/?p=conference&a=show&id=24

Corporate Disputes in Russia: Arbitrable or Non-Arbitrable?

by Dilyara Nigmatullina

(also published at www.cisarbitration.com)

Several recent court decisions in Russia, the most recent of which was taken on December 6, 2011, show disagreement with regard to arbitrability of corporate disputes in Russian state courts. On May 26, 2011 the Constitutional Court of the Russian Federation confirmed arbitrability of real estate disputes. The decision on arbitrability of corporate disputes is yet to come.

On July 4, 2011, the 9th Commercial Appeals Court (the "Appeals Court") vacated the ruling of the Moscow City Commercial Court (the "City Court") dated April 26, 2011 in *OJSC NLMK v. N.V. Maksimov*.

When the dispute was considered in the City Court, OJSC NLMK ("NLMK") requested to invalidate the share purchase agreement with N.V. Maksimov ("Maksimov") and to order restitution of the amount paid under the agreement. The City Court dismissed the case based on the Respondent's motion and article 148.5 of the RF Commercial Procedure Code (the "Commercial Procedure Code"), holding that the parties provided in their contract for the disputes to be resolved by arbitration.

NLMK appealed, alleging that the dispute was non-arbitrable, as it involved public interests and third parties' rights were not reasonably protected in the proceedings. The Appeals Court vacated the lower court's ruling for two main reasons, both relating to the fact that the International Commercial Arbitration Court at the RF Chamber of Commerce and Industry (the "ICAC") lacked jurisdiction over the dispute.

First, despite the fact that the parties provided under article 17 of the Share Purchase Agreement to refer all disputes arising out of their Agreement, including those regarding the Agreement's invalidity for resolution to the ICAC, NLMK argued that article 1.2 of the RF Law on International Commercial Arbitration establishes further requirements that had to be satisfied for a dispute to be referred to international commercial arbitration. That rule of Russian law provides that only issues arising from contractual or other civil law relationships in the course of foreign trade and other

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forms of international economic relations may be subjected to international commercial arbitration.

In the view of the Appeals Court, the record on appeal did not indicate that the dispute arose in the course of foreign trade or other forms of international economic relations, or that one of the parties was situated abroad or was an enterprise with foreign investment. That had to be established, and since it was not, the Appeals Court disagreed with the lower court on this issue.

Second, NLMK also argued that the dispute was non-arbitrable in light of domestic legislation which provided exclusive competence over commercial disputes to state commercial (arbitrazh) courts. In this, the Appeals Court referred to articles 225.1.3 and 33.1.2 of the Commercial Procedure Code in finding that under the existing legislation corporate disputes could not be referred to arbitration for resolution.

An article published previously in AIA Newsletter of August 2011 addressed another case involving the same parties and the same share purchase agreement. There on June 21, 2011 the court of the first instance annulled the ICAC award and non-arbitrability of corporate disputes was one of the grounds of the annulment. Interestingly, in the current case the opposite position was taken by judges of the same City Court: the parties were initially referred to arbitration even though the corporate nature of the matter in the case was obvious.

As of late there has been much discussion regarding arbitrability in general, specifically of another matter – real estate disputes. That was until the RF Constitutional Court (the "Constitutional Court") rendered a decision in that respect on May 26, 2011. The Constitutional Court first considered that the right to refer a dispute for resolution either to a state court (of general jurisdiction or commercial one) in accordance with its competence or to arbitration did not constitute violation of constitutional guarantees but instead broadened the possibilities of dispute resolution in civil turnover.

Furthermore, the Constitutional Court stated that the provisions of the Commercial Procedure Code under which disputes regarding real estate located in the Russian Federation belonged to the "exclusive" jurisdiction of state commercial courts still could not bar arbitration because the purpose of those provisions was merely to distinguish the competence of state courts of different countries in resolving cross-border disputes. The Constitutional Court concluded that the relevant provisions of Russian legislation constitutionally permitted resolution of real estate disputes by arbitration.

Similar reasoning might therefore apply to corporate disputes by analogy. If the "exclusive" jurisdiction for state courts over real estate matters is no bar to the arbitrability of such disputes, then neither should the "exclusive" jurisdiction over corporate matters be a bar to their arbitrability. Unfortunately, Maksimov's request for assessment of the arbitrability of corporate disputes filed on July 19, 2011 with the Constitutional Court was dismissed on technical grounds.

Nevertheless, the arbitrability of *OJSC NLMK v. N.V. Maksimov* dispute has not been finally decided upon. On December 6, 2011 the Federal Commercial Court of the Moscow region (the "Federal Court") vacated both abovementioned rulings, of the City Court of April 26, 2011 and of the Appeals Court of July 4, 2011, further to Maksimov's appeal, and remanded the case for a new trial to the same City Court.

Among other raised points the Federal Court mentioned that the "exclusive" jurisdiction under article 38 of the Commercial Procedure Code distinguished the competence of state commercial courts within their own system as provided in article 3 of the Federal Constitutional Law "On Commercial Courts of the Russian Federation". At the same time, article 33 of the Commercial Procedure Code contains a list of cases which are under "special" jurisdiction of state commercial courts. One of the questions that the City Court will have to analyze in a new trial, as per the Federal Court, is whether the "special" jurisdiction of state commercial courts over corporate disputes as set in article 33.1.2 of the Commercial Procedure Code excludes the possibility of resolution of such disputes by arbitration.

It seems that another decision of the Constitutional Court might be needed in order to put an end to the existing inconsistency in interpretation of arbitrability of corporate disputes.

Book Review – Asia Arbitration Guide

by Anton Fischer

Over the last decades arbitration has become the preferred method of alternative dispute resolution within the Asia-Pacific region; reason enough for Respondek & Fan Attorneys at Law in Singapore and Bangkok to edit and publish their 2nd Edition of Asia Arbitration Guide, a handbook aimed to summarize the practical aspects of the rules and regulations applying to arbitration in major Asian countries such as Bangladesh, Cambodia, China, Hong Kong, India, Indonesia, Japan, Korea, Laos, Malaysia, Myanmar, Philippines, Singapore, Taiwan, Thailand and Vietnam. Furthermore Respondek & Fan also introduce the Chinese European Arbitration Centre which has its seat in Hamburg and is specialized in Sino-European disputes.

This guide provides a detailed review of various Asian arbitration regulations and the legal issues related to arbitration in each country. It represents contributions by arbitration experts of a number of Asian countries who sum up their relevant information in form of country reports.

By means of common structure, providing for a helpful overview of national institutions, relevant laws and usage covering arbitration from its initiation to the stage of the award's enforcement, arbitration related facts of each country are easily compared to each other. A separate section deals with recent noteworthy developments regarding arbitration in the respective countries.

Intended to provide practical information, Respondek & Fan's Asia Arbitration Guide will attract foremost law practitioners and consultants looking for a suitable place to conduct arbitration in the Asia Pacific Region. Others, however, may use it as a starting point for conducting ADR related research with regard to Asia.

This book is available for purchase at:

http://www.i-law.com/ilaw/browse_chapters.htm?name=Asia%20Arbitration%20Guide

An arbitration clause cannot deprive **commercial agents of "goodwill indemnity"**

One of the principal contributions of the Council Directive 86/653/EEC of 18 December 1986 on the coordination of the Laws of the Member States relating to self-employed commercial agents ("Directive 86/653/EEC") is to provide for payment of an indemnity to such agents by their principals after termination of an agency contract (the so called "goodwill indemnity").

The Belgian Supreme Court rendered on 3 November 2011 an important decision regarding the invalidity of an arbitration clause in a commercial agency agreement that allowed using a law that did not offer the abovementioned goodwill indemnity. The Supreme Court upheld the decision of the Court of Appeals that refused to take into consideration an arbitration clause providing for application of Quebec law to a relationship between a Canadian principal and a Belgian commercial agent. By upholding the Court of Appeals' position, the Supreme Court did not explicitly refer to the principles of the European Law, but those pertaining exclusively to Belgian law.

According to Belgian law, any activity of a commercial agent having its principal place of business in Belgium is subject to Belgian law and jurisdiction. Because the Quebec Law did not provide the commercial agent with a goodwill indemnity as did the Belgian law, the Belgian Supreme Court could not allow an arbitration clause that made the Quebec law applicable. Consequently, the Belgian courts had sole jurisdiction over the dispute.

Such position of the Belgian courts is totally in line with the EU law and jurisprudence. For example, in Ingmar case (Ingmar GB Ltd v. Eaton Leonard Technologies Inc., Case C-381/98, 2000 E.C.R. I-9305) the European Court of First instance held that Articles 17 and 18 of the Directive 86/653/EEC, which guarantee certain rights to commercial agents after termination of agency contracts, must be applied where the commercial agent carried on his activity in a Member State although the principal is established in a non-member country and a clause of the contract stipulates that the contract is to be governed by the law of that country. A principal cannot evade those provisions by the simple expedient of a choice-of-law clause without consideration as to whether or not that choice operates to the detriment of the commercial agent

Though the system established by the Directive 86/653/EEC concerning the protection of the commercial agent after termination of the contract is mandatory in nature, this does not mean that the amount of the indemnity will be the same in all EU Member States. As regards the indemnity for termination of the agency contract, the Member States may exercise their discretion as to the choice of methods for calculating the indemnity only within the strict framework established by Articles 17 and 18 of the Directive 86/653/EEC. Determining the amount of the indemnity can thus still be quite different among the EU member states

Article 19 of the Directive 86/653/EEC clearly provides that the parties may not derogate from Articles 17 and 18 to the detriment of the commercial agent before the agency contract expires.The issue of whether or not that derogation is unfavourable must be determined at the time the parties contemplate it. One cannot agree on derogation if he does not know whether at the end of the contract it will prove to be favourable or detrimental to the commercial agent. Derogation from the provisions of Article 17 may be accepted only if, *ex ante*, there is no possibility that at the end of the contract that derogation will prove to be detrimental to the commercial agent.

The Belgian Supreme Court did not go so far as to say that when the commercial agent works in different Member States, for instance in Belgium and in France, an arbitration clause, making French law applicable, would be invalid. The reason for inapplicability of the Quebec law, in the Supreme Court's view, was that it did not provide a protection equivalent to the one under Belgian law.

The mere fact that an agreement may be favourable to the commercial agent if he is entitled, in accordance with the criteria laid down in Article 17 of the Directive 86/653/EEC, to only a very small indemnity or even to nothing at all, is not sufficient to establish that the agreement does not derogate from the provisions of Articles 17 and 18 of the Directive to the detriment of the commercial agent. It is for the national court to make the necessary investigations for that purpose. An arbitration clause in an agreement that would apply another EU Member State law, based on the Directive 86/653/EEC, even if that law differs from the Belgian Law seems a priori to give an equivalent protection and would not be declared invalid.

Although, one might draw similarities between the above decision of the Belgian Supreme Court and the one of January 14, 2010, regarding the application of Article 4 of the Belgian Law of 27 July 1961 on Unilateral Termination of Exclusive Distribution Agreements of Indefinite Duration, the grounds for invalidity of arbitration clauses in these two cases were different. In the latter case the voidance was due because an arbitration clause provided for the application of a law other than Belgian, whereas in the former one what made the arbitration clause null and void was that the law chosen by the parties did not provide the commercial agent with the protection equivalent to the one under Belgian law.

INVITING SUBMISSIONS FOR THE AIA MONTHLY NEWSLETTER

The Association for International Arbitration (AIA) invites for articles to be published in its monthly newsletter "In Touch" distributed to a large network of ADR professionals worldwide. The articles are required to be ADR oriented, original and not previously published anywhere else. Please send your articles by the 20th of every month to be included in the forthcoming monthly newsletter. AIA reserves discretion to decide regarding article's publication upon its review. If interested please forward your submissions to events@arbitration-adr.org.

PCA Adopts New Rules of Procedure

On December 6, 2011, the Administrative Council of the Permanent Court of Arbitration (the "PCA") adopted the "PCA Optional Rules for the Arbitration of Disputes Relating to Outer Space Activities."

The project was set in motion in 2009 by the PCA's former Secretary-General, Mr. Christiaan M.J. Kröner, in response to a perceived need for specialized dispute resolution mechanisms in the rapidly evolving field of outer space activities. The text was developed by the International Bureau of the PCA, in conjunction with an Advisory Group of leading experts in air and space law.

The Advisory Group is chaired by H.E. Fausto Pocar, judge of the International Criminal Tribunal for the Former Yugoslavia. The other members of the Advisory Group are Dr. Tare Brisibe, Prof. Frans von der Dunk, Prof. Joanne Gabrynowicz, Prof. Dr. Stephan Hobe, Dr. Ram Jakhu, Prof. Armel Kerrest, Mrs. Justine Limpitlaw, Prof. Dr. Francis Lyall, Prof. V.S. Mani, Mr. Jose Montserrat Filho, Prof. Dr. Maureen Williams, and Prof. Haifeng Zhao.

ICSID will revise its Schedule of Fees effective January 1, 2012

The Centre's administrative fee, which has been in effect since January 1, 2008, will be adjusted to US$32,000 for all new and pending cases. The administrative fee is levied after the constitution of the conciliation commission, arbitral tribunal, or *ad hoc* committee and annually thereafter.
The Centre will also eliminate the fee it currently charges parties for its legal staff to attend hearings held away from the seat of the Centre. This fee, which is currently US$1,500 per day of hearing and travel, will be covered by the administrative fee.
In addition, the costs of hearing rooms will now be covered by the administrative fee when the proceedings are held in World Bank Group facilities.

AIA Recommends to attend

SEE Investment Protection 2011

Safeguarding investment in SEE: The role of Dispute Resolution

1 February 2012 Vienna, Austria
http://www.eelevents.co.uk/see_investment_protection_forum_2012/
delegate@eelevents.co.uk
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This event will unite key players from across the Investment industry, both from private and public sectors, tackling key issues facing investors and states in this growing region. Focusing on dispute resolution and investment concerns this event will provide a platform for leading Law Firms to provide an overview of the legal options available to investors in relation to investment treaties and dispute resolution.

Key topics:

- ⇒ Addressing the Eurozone crisis and the impact on investment appetite
- ⇒ Impact on ratings and trade
- ⇒ Mitigating risk in Investor-State disputes
- ⇒ The recent Hungarian Mortgage crisis and its Impact on European Lenders
- ⇒ Promoting Foreign Direct Investment (FDI) in emerging markets
- ⇒ The importance of ADR in SEE: Case study IFC's ADR Program
- ⇒ Limiting risks and getting results – the use of ADR and mediation
- ⇒ The legislation and investment environment in post-Soviet markets: The case of Belarus
- ⇒ The role of mediation, do investors understand its role?
- ⇒ Risk avoidance: What to watch out for?
- ⇒ Understanding legal frameworks and ADR
- ⇒ The role of the State: Upholding BITs, MITs and International Conventions

This event will attract a broad range of financiers and investors, from the major banks, through to pension funds and private equity firms, and will offer a platform for leading experts to share their knowledge and showcase their expertise to investors in relation to investment risk and dispute resolution. This forum will highlight to investors the importance of consulting an arbitration/dispute resolution lawyer before investing in emerging markets, and will therefore provide an excellent opportunity to meet potential new clients.

Whether you are looking to enhance your presence in South and Eastern European markets, investing in new projects or want to find out more about investment protection and dispute resolution, this event ensures you meet leading legal experts, public stakeholders and investors. Contact our investment team for more information about participating, presenting or exhibiting at this event.

Members of AIA receive 15% discount on registration.

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