Association for International Arbitration
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February 2012

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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.

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

Plotting a Future for Commercial Mediation in Spain

by Clifford J. Hendel

Judicial and Arbitral Resolution: Lack of Resources, Lack of Confidence

It is easy, and quite frequent, to criticize the administration of justice in the Spanish courts insofar as commercial disputes are concerned. Overcrowded, understaffed, and technologically-impaired, the courts are generally viewed as ill-equipped to put a timely and definitive end to a litigious matter, and often ill-prepared to handle sophisticated commercial or financial disputes.

It is similarly easy and frequent to criticize the operations of arbitration in Spain insofar as commercial disputes are concerned. Expensive, overly-"Solomonic", concentrated in a relatively limited number of sometimes rather party-oriented individuals, arbitration – particularly in the domestic context – is generally viewed as an imperfect form of dispute resolution in Spain.

In short, Spanish judicial resolution lacks specialization and rapidity, and arbitral resolution lacks confidence and transparency. In time, both of these problems can of course be remedied, at least to some extent: more and better resources and increased specialization will facilitate the arduous tasks of the Spanish courts; and Spanish arbitration practices, and the perception of arbitration in Spain, will improve over time as the institution becomes more accepted and its practice and practitioners increasingly converge with international tendencies and expectations in the area. Respect for judicial resolution of disputes in Spain will eventually grow, and confidence in the institution of arbitration in Spain will eventually increase.

Mediation as An Answer?

Recent years have evidenced a veritable tsunami of literature and law, or doctrine and legislation (as you prefer), regarding the institution of mediation and its idoneity for the resolution of commercial disputes. The collection of relevant texts available on Amazon.com is overwhelming in size and includes texts (some now considered classics) dating back thirty years or more.

Legislative initiatives in the area are also in vogue. These include the relevant EU Directive (2008/52/EC on certain aspects of mediation in civil and commercial matters) and its implementation in many EU jurisdictions. There is a draft law being considered by Spain in belated implementation of the Directive and similar legislation has been enacted by certain of Spain's regions.

The EU Directive, issued in May 2008, called for transposition by the member states by late May, 2011. In a mere two and a half pages of text (and three of recitals) in the EU Official Journal, the Directive's object is to encourage the use of mediation in cross-border civil and commercial disputes by "*ensuring a balanced relationship between mediation and judicial proceedings*". It encourages member states to develop "*...by any means which they consider appropriate... effective quality control mechanisms concerning the provision of mediation services*". It requires member states to permit that written agreements resulting from mediation be made enforceable at the request of the parties. And it provides that member states shall ensure that time involved in the mediation process shall not be counted so as to bar or limit the initiation of judicial or arbitral proceedings by reason of limitation and prescription periods.

The Spanish draft law (published on April 29, 2011 but still pending parliamentary debate and enactment) goes beyond the requirements of the Directive, and attempts to provide a general regime applicable to all mediation in Spain. Highlights of the draft include the following:

- ⇒ a requirement that the Ministry of Justice maintain a register of mediators and mediation institutions, inclusion on which will permit mediations carried out by such mediators or under the auspices of such institutions to benefit from the provisions of the law;
- ⇒ the requirement that the mediator (in addition to being included in the register of mediators/mediation institutions referred to above) take out a professional liability insurance policy;
- ⇒ the declaration that the appropriate public authorities, in conjunction with the mediation institutions, shall foment initial and continuing formation of mediators, the preparation of codes of conduct, and the adhesion by mediators and institutions to the same; and
- ⇒ fairly detailed requirements as to mediation procedure, contemplating for example the contours of an initial "*informative session*" with the parties and a "*constitutive session*" to conclude with a document reflecting basic elements of the dispute and the process;

This draft has been heavily-criticized in commercial circles. In part, for imposing all manner of rigid requirements for all mediations, including commercial mediation, giving rise to the entirely anomalous situation where the parties can agree freely on the identity of an arbitrator to impose a resolution of their dispute, but their choice of a mediator to facilitate a resolution is subject to various limitations, including the individual's appearing on a government registry as noted above. And in part for denying the benefits of the legislation – as to confidentiality, tolling of limitation periods, enforceability of mediation settlements agreement, etc. – to any mediation not conforming to these rigidities.

Where will this legislative initiative lead? Will it have the desired effects of jump-starting mediation as an effective, private and economical alternative to judicial resolution of civil and commercial disputes in Continental Europe in general and Spain in particular? Time will tell.

Surely the laudable objectives of the draft Spanish law and the lofty language of its lengthy recitals will not themselves be sufficient to achieve their desired effect: it remains for parties and – perhaps especially, lawyers, including, particularly in-house lawyers – to give mediation a chance, in recognition of the undeniable merits of quick, cheap and inter-party dispute resolution. If they do, perhaps mediation can soon take its rightful place as an essential first tool of assisted dispute resolution in Spain, leaving slower, more costly, third-party decision-making via arbitration or litigation only for those disputes which have proven not able to be resolved by mediation.

The CPR Pledge as a Path Forward?

These, and other, legislative initiatives might well be useful, and stimulative to the growth of mediation in Spanish commercial disputes. But it is submitted that legislation is neither necessary nor sufficient to catalyze mediation in this country. Instead, a more likely means of raising the visibility of the institution and lowering the principal obstacles to its use may be to emulate the practice implemented by the International Institute for Conflict Preservation and Resolution (CPR) in its famous "CPR Pledge".

Formally named the "Corporate Policy Statement on Alternatives to Litigation", the CPR Pledge has been signed by over 4,000 companies in the United States. As described by CPR, the Pledge is not intended to create enforceable rights or obligations, or to waive any substantive or procedural rights or obligations. Instead, it is a statement of policy aimed at encouraging greater use of flexible, creative and constructive approaches of resolving disputes. As such, its adoption sends the message that willingness to negotiate or mediate is not a sign of weakness, but rather company policy.

The CPR Pledge reads in essential part as follows:

In the event of a business dispute between our company and another company which has made or will then make a similar statement, we are prepared to explore with that other party resolution of the dispute through negotiation or ADR techniques before pursuing full-scale litigation.

A parallel pledge, the "CPR Law Firm Policy Statement on Alternatives to Litigation", has been created for law firms.

More than 1,500 U.S. firms have signed this pledge. Again, it is a mere declaration of awareness of ADR and of the firm's commitment to be knowledgeable about ADR and to discuss it with the client in appropriate circumstances. The Law Firm Pledge reads in essential part as follows:

[A]ppropriate lawyers in our firm will be knowledgeable about ADR. [W]here appropriate, the responsible attorney will discuss with the client the availability of ADR procedures so the client can make an informed choice concerning resolution of the dispute.

In 2004, a working group of French lawyers (in-house and external), judges, business people and mediation centers called "the Academy of Mediation", undertook a study to determine the reasons for the relatively limited development and use of commercial mediation in France. Their conclusions identified two principal reasons: the fact that the French judicial system worked rather well, in particular compared to the judicial systems of neighboring countries, and the need for a "cultural revolution among all participants", judges, lawyers and companies. One of the principal measures that the Academy proposed to redress this situation and that was implemented in 2005, was the adoption of a CPR-based pledge which was signed by 50 important French companies in a ceremony led by the then -Minister of Finance. Its text mirrors that of the CPR Pledge and the CPR Law Firm Policy excerpted above.

It is submitted that a similar conscience-raising campaign, perhaps ideally driven by in-house counsel and aimed principally at in-house counsel, for the adoption of a similar pledge by a broad spectrum of leading Spanish enterprises could be a significant force in dynamizing the world of Spanish commercial mediation.

"Step-Clauses" as a Useful Complement

Going hand-in-hand with the possible implementation of a CPR Pledge-like campaign in Spain, but able to proceed independently and without delay, would be to expand the use of "step-clauses", i.e., dispute resolution clauses which encourage or require the use of ADR mechanisms (negotiation and mediation), before allowing resort to the contemplated adjudicative means of resolution (litigation or arbitration). The CPR's Model Master Dispute Resolution Agreement for Arbitration could be a useful model.

Like the Pledge itself, the inclusion of a step-clause signals a mutual willingness – before a dispute has arisen and thus unable to be interpreted as a sign of weakness – to try to resolve a dispute quickly and amicably between the parties, before putting it in the hands of a third party adjudicator (be it judge or arbitrator(s)).

Again, it is submitted that a campaign to sensitize companies and counsel to the existence and utility of step-clauses could only help in dynamizing the world of Spanish commercial mediation.

In Closing

Just as dissatisfaction with traditional litigation led to the boom in arbitration experienced in most developed countries in the last decades of the twentieth century, dissatisfaction with arbitration has triggered the search for further "alternative" forms of dispute resolution. The clear world favorite today is mediation.

There is no good reason for things to be any different in Spain. Indeed, the relative dissatisfaction with arbitration in Spain and the relatively limited uptick in its use despite various legal and economic factors which one would think would have served as impetus to a real boom in the area could actually give mediation a chance to "leapfrog" arbitration as a preferred alternative to traditional jurisdiction for commercial court disputes in Spain. The suggestions above as to the broad-based adoption of a CPR-like pledge and the introduction of step-clauses could help lay the groundwork for growth of commercial mediation in Spain, and put to rest the traditional argument that reasons of "culture" make Spain unfit for the institution.

By being sure that clients are aware of amicable forms of dispute resolution and facilitating ways for clients to consider their use in appropriate circumstances, lawyers – internal and external – can achieve professional satisfaction: We can do well by doing good, and there will still be business enough (paraphrasing the famous comment by the US wilderness lawyer, Abraham Lincoln).

Promoting awareness of the existence and advantages of mediation by means of a CPR-type pledge and considering the appropriateness of step-clauses in every dispute resolution clause would seem to be easy and effective steps in the right direction.

Russian Constitutional Court on the Period for Enforcement of Foreign Arbitral Awards

by Dilyara Nigmatullina

(also published at www.cisarbitration.com)

The Russian Constitutional Court ("RCC") recently had to review Russian legislation on the procedure of enforcement of foreign arbitral awards. On 2 November 2011 the court ruled that the application for enforcement of foreign arbitral awards had to be made within the period of three years unless there were legal grounds to prevent their enforcement on the territory of the Russian Federation.

Facts of the case

The dispute which eventually led to the Constitutional Court's ruling arose in Ryazan. Ryazan Metal Ceramics Instrumentation Plant JSC ("Ryazan Plant") initiated assessment of constitutionality of articles 246.2 and 321.1.1 of the Russian Commercial Procedure Code ("RCP Code").

The following facts preceded the request of Ryazan Plant. On 7 August 2008 Lugana Handelsgesellschaft GmbH applied to the Commercial Court of the Ryazan Region for recognition and enforcement of three awards rendered against Ryazan Plant by the German Institution of Arbitration (DIS) on 11 August, 14 October and 27 December 2005. Russian Commercial Courts of various instances reviewed the matter, including Russian Supreme Commercial Court

("SCC"), which upheld the enforcement order rendered on 23 March 2010.

Ryazan Plant objected to enforcement and on 27 April 2010 requested the Commercial Court of the Ryazan Region to withdraw the order. The application was rejected. Ryazan Plant appealed and again went up to the SCC, which upheld the decision of the Commercial Court of the first instance. Ryazan Plant argued that the three-year term for submission of the arbitral award for enforcement included both the term for applying to court to issue the enforcement order and the term for applying to court bailiff service with such order. SCC disagreed and explained that the law established two separate periods: three years to submit the award to obtain the enforcement order, and three more years since the day of such order to apply to the bailiff service.

The Ryazan Plant believed that such approach was unfair for the debtors and, consequently, it filed a request with the RCC stating that Articles 246.2 and 321.1.1 of the RCP Code provided for an excessively long term for enforcement of foreign awards and thereby contravened the principle of legal certainty and Articles 19.1, 19.2 and 46 of the Russian Constitution. Those articles dealt with equality of people before the law and courts, the State's guarantee of the equality of rights and freedoms of man and citizen and the guarantee of everyone's judicial protection of rights and freedoms.

Ruling of the Russian Constitutional Court

The RCC first noted that article 15.4 of the Russian Constitution declared the priority of international treaties over national legislation. Then the court referred to article III of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards which allows each Contracting State to recognize foreign arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon. Under article 241.1 of the RCP Code foreign arbitral awards are recognized and enforced in the Russian Federation by Commercial Courts if an international treaty to which the Russian Federation is a party and federal law provides for such enforcement and recognition.

In accordance with Article 246 of the RCP Code a foreign arbitral award is enforced further to an enforcement order issued by a Commercial Court that has rendered a decision regarding the award's recognition and enforcement. It is possible to submit application for enforcement of a foreign arbitral award within three years since its effective date. Further on, Russian legislation specifies that an enforcement order may be submitted for execution within three years since the effective date of a Commercial Court's decision regarding recognition and enforcement of an award.

In view of the above, the RCC concluded that the contested articles 246.2 and 321.1.1 of the RCP Code were not uncertain and did not violate any constitutional rights, including the right for judicial protection. Commercial Courts already established that the application for enforcement of foreign arbitral awards had been made within the period of three years and there were no any impediments for their enforcement on the territory of the Russian Federation. Consequently, on 2 November 2011 the RCC dismissed the request of Ryazan Plant.

Binding a Non-signatory to an Arbitration Agreement:

the Group of Companies Doctrine

by Anand Ayyappan Udayakumar

By principle while a few may argue that only signatories to an arbitration agreement can be bound by it, in reality circumstances may arise in arbitration by which a party who has not signed an arbitration agreement may be bound by it. Increasingly, parties to a contract attempt to bind third party non-signatories to arbitration agreements either because the third party was so involved in the performance of the contract or the third party became involved in the dispute. This attempt, understandably, is often met with resistance from those third parties who do not want to be brought into the dispute.

Parties can only be bound to an arbitration clause if they intended to be bound by signing the contract or by demonstration of manifest intent to submit as a party to the contract. By providing importance to the principles of privity of contract and autonomy of the parties, the courts have been hesitant in compelling non-signatory parties to be bound by an arbitration agreement. Majority of the courts still require express or implied consent to arbitration and when a particular case lacks express consent, the courts will try to deduce from the conduct of the parties the presence of implied consent. While signature or written form are ususally required to bind a party to an agreement, several exceptions to this requirement have emerged under the doctrine of implied consent. They are:

⇒ Incorporation by Reference: In spite of a party not signing the contract including the arbitration agreement, it will be compelled to arbitrate because it signed the contract referencing the contract requiring arbitration. This scenario arises when a party signs an agreement that incorporates or references a second agreement that includes an arbitration clause.

⇒ Assumption: Under the theory of assumption, a non-signatory may be bound if he exhibits manifest intent to arbitrate through his conduct and another party has relied on that conduct. If the non-signatory's conduct is representative of waiving any objection to be bound by an arbitration agreement, then this is adequate to amount to implied consent under this theory.

⇒ Agency: The principal may be bound by an arbitration agreement signed by the agent, provided an agency relationship was existent between the

either and the contract ought to have been signed by the agent acting within the scope of the agency relationship.

⇒ Veil Piercing: having it's origin in corporate law, this principle connotes that a non-signatory can be bound to an arbitration agreement if the agreement was signed by a parent, subsidiary or affiliate of a corporation.

⇒ Equitable Estoppel: This principle prevents non-signatories who take advantage of the benefits in a contract from abstaining from the associated obligations that follow.

The Group of Companies Doctrine

In practice, a non-signatory company may benefit from or be bound by an arbitration agreement signed by another company which belongs to the same corporate group as the former company. This occurrence is usually referred to as the 'Group of Companies Doctrine' and is of significant importance in international arbitration as it attracts varying incidences and obligations for non-signatory companies. The inception of this doctrine is attributable to French Courts and since then it has obtained global acceptance by different courts around the world.

A non-signatory company by merely belonging to a group of companies will not stand bound by this doctrine. There has to be compelling evidence to prove that a non-signatory conceded to be bound to the agreement by the existence of consent or conduct amounting to consent.

The Group of Companies Doctrine is intricately associated with the scope and effect of the jurisdiction of the arbitral tribunal which may determine whether or not to bind a non-signatory company to an arbitral proceeding and/or to award them damages.

Status of the Group of Companies doctrine in different jurisdictions

The ICC case of Dow *Chemical France v. Isover Saint Gobain* (ICC Case No. 4131, Interim Award of 23 September 1982) is of significant importance to enunciate the doctrine of group of companies. The issue under consideration was whether companies which did not sign the contract containing the arbitration clause but were in the group that participated in the formation, performance and termination of the contract were bound by it. The arbitrators acknowledged the consent requirement and determined that in spite of being a non-signatory to the contract, Dow Chemical was bound by it, as it exhibited control over its subsidiaries and was involved in the performance of the contract at issue.

However, subsequent ICC awards have not consistently applied this doctrine and variable awards have been delivered. In ICC case no. 7626 of 1985, the governing law was determined as the Indian Law and the tribunal refused to apply the doctrine as judicial precedents on lifting the corporate veil in common law jurisdictions do not provide weight to this doctrine. The tribunal did not interpret the common intent of the parties but referred instead to the proper law and abstained from applying the doctrine.

In ICC case no. 4504 of 1985, the tribunal concluded that though interference by parent company in the performance of the agreement was inherent, but on facts that could not be said to construe ratification of the arbitration agreement.

Subsequent ICC awards also extended application of this doctrine to companies that participated in negotiation, conclusion, or termination of contract. The degree required to prove intention to arbitrate is not uniform and an expansive interpretation of common intention of parties is inferable from the awards.

Judicial trend in USA evidences the fact that the doctrine of group of companies is not explicitly recognized. The courts interpret the term 'party' and apply the doctrine of alter ego with similar results. This approach is to further the federal pro-arbitration policy.

This doctrine finds acceptance and is recognized by the French Courts which provide a liberal interpretation to determine the 'common intention of the parties' and 'full autonomy' is given to the arbitration agreement.

In the United Kingdom, the case *of Peterson Farms, Inc. v. C & M Farming Ltd*. ([2003] APP.L.R. 09/05) is another example of a court refusing application of the group of companies doctrine. The court on appeal rejected the standing taken by the tribunal which upheld the group of companies doctrine and nullified the opinion that the non-signatory party was entitled to be bound by the arbitration clause owing to the presence of an agency relationship.

The Indian Courts are yet to test the Group of Companies Doctrine. The Supreme Court in Sukanya Holdings v. Jayesh Panda (AIR 2003 SC 2252) held that there was no power conferred on the court to add parties who were not parties to the agreement in the arbitration proceedings. The Indian law is based on the common law traditions and the Indian courts are not sympathetic to third party rights.

Hence, there exists variability of acceptance of the doctrine in different jurisdictions. This is attributable to the fact that this doctrine is in fact specific in application combined with the judicial trend of the concerned jurisdiction.

Abstaining from being attracted by this doctrine

The generally accepted phrase that 'prevention is better than cure' is clearly applicable here. Proper precaution should be taken at the time of drafting the contract with specific focus on ensuring that the parties clearly specify the applicable law of the arbitration agreement and foresee potential third party issues that may arise.

Interpretation of the doctrine

Certain exponents consider that the doctrine of group of companies is futile and should be abolished, owing to the fact that the doctrine is not a popular one as certain jurisdictions would not even consider applying this doctrine. UK can be sighted as an apt example. As opposed to involuntary joinder, scholars argue that the doctrine makes more sense for parties attempting to voluntarily join arbitration.

On the global scale, the doctrine still remains a

debatable issue in international commercial arbitration and a common consensus in accepting the same is not existent.

Latest developments in the YUKOS case

On 21 December 2011 YUKOS shareholders appealed at the European Court of Human Rights Grand Chamber the decision that denied recognition of political motivation behind the events that resulted in the company's bankruptcy. Thereby YUKOS shareholders exercised their right under the European Convention on Human Rights of 1950, which allows any party, during the three-month period following the delivery of the judgment, to request that the case be referred to the Grand Chamber of the Court. In such a case, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that date.

The appealed decision was rendered on 20 September 2011. The European Court of Human Rights found that there had been a violation of several articles of the European Convention on Human Rights. Thus, in view of the Court, YUKOS was deprived of a right to a fair trial concerning the 2000 tax assessment proceedings against it, because it had insufficient time to prepare the case before the lower courts. There have also been certain violations concerning the 2000-2001 tax assessments, regarding the imposition and calculation of penalties. Additionally, the Court found that the enforcement proceedings were disproportionate. Noting that the case had attracted massive public interest, the Court did not recognize any political bias in the trials because there was no indication of any further issues in the proceedings, apart from abovementioned ones, against YUKOS which would have enabled the Court to conclude that Russia had misused those proceedings to destroy YUKOS and take control of its assets.

Though, YUKOS shareholders asked from Russia about $98 damages, the Court postponed examining this issue for three months giving the possibility to the parties themselves to reach a settlement on the amount of damages. The appeal of the judgment of 21 December 2011 delayed the examination of the damages issue indefinitely.

EMPTJ Alumni Corner

AIA is pleased to announce that last December Maria Francesca Francese, a graduate of EMTPJ 2011, was appointed as President of In Media, an association founded in 2008 in Milan, Italy, that gathers more than 300 professionals (lawyers, accountants, psychologists, sociologists and business people) engaged in mediation.

Since its foundation In Media promoted the culture of mediation and ADR holding seminars, workshop and training courses both for professional mediators and people simply interested in a new, collaborative way of facing and solving conflicts. The core of In Media is a new vision of the conflict: it cannot be eliminated but it can be managed and transformed, by re-elaborating the logics of paradigms such as wrong/ right or winning/losing, starting with common interests and taking creative approach in seeking practical solutions.

AIA wishes Maria Francesca Francese continued success in her new position!

Website of In Media: www.associazioneinmedia.it

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InterMediation is headed by Mr. John Gunner, a graduate of EMPTJ 2011 and one of the most widely-experienced accredited Mediators in the UK.

InterMediation's expertise covers Civil/Commercial, International, Workplace and Community Mediations and is accredited by the Civil Mediation Council in England and Wales.

InterMediation's Mediators have expertise in its multi award-winning Telephone Mediation which provides a valuable and unique service nationally and internationally. In addition to training and consultancy in conflict prevention and all resolution techniques, InterMediation successfully collaborates with lawyers, arbitrators and other professionals to provide the full range of processes and services worldwide.

Website of InterMediation

www.intermediation.com

AIA Recommends to Attend

Conference on ADR in Poland

The Court of Arbitration at the Nowy Tomyśl Chamber of Commerce and the Association for International Arbitration are hosting a conference "Unification Tendencies in ADR and the Divergences of National Legal Systems" on March 16th, 2012 in Nowy Tomyśl (Poland).
The conference programme will be available by February 20th, 2012. Applications can be sent until March 5th, 2012 to sa@nig.org.pl. Contact numbers: + 48 61 44 20 185 and + 48 608 080 345. Participation at the conference is free of charge.

The ICC Mediation Week

The ICC International Commercial Mediation Competition

The ICC International Commercial Mediation Competition ("Competition") was inaugurated in 2006. It has been recognized worldwide for its ability to train law students to better meet the dispute resolution needs of today's cross-cultural global market.

The Competition is open to universities from all over the world to give their students the opportunity to test their problem-solving skills in a mock international mediation.

The Competition has been growing each year since its inception in size as well as in international visibility. This year, the 7th Competition is the largest and most culturally diverse Competition so far, gathering 66 universities from 32 different countries and participants of many more nationalities from around the globe. Further, ICC expects around 120 professional mediators from all continents except Antarctica to participate on a volunteer basis in this unique event.

The Competition is organized by the ICC ADR Secretariat with the help of numerous volunteers – ranging from worldwide renowned mediators to ICC interns. The Competition is supported financially by numerous law firms, consultancy firms and dispute resolution institutions, and has the support of some of the world's biggest companies which are active mediation users.

In light of the cultural diversity of this Competition, the problems submitted to the participants have been prepared by the ICC Competition Drafting Committee composed of seven professional mediators from different regions of the world having diverse professional backgrounds.

The Competition consists of two parts: written advocacy and oral advocacy. At the outset, teams are required to submit a brief *ex parte* submission setting forth their mediation strategy.

This is followed by a real-time mediation session where teams are required to apply the general fact pattern and the confidential information they have received in order to arrive at a settlement within the framework of the ICC Amicable Dispute Resolution (ADR) Rules. Each session is mediated by an experienced international commercial mediator and evaluated by a panel of judges who will test the teams on their representation skills, problem-solving approach and ability to handle different cultural approaches to mediation. All the participating mediators and dispute resolution professionals in the Competition do so on a volunteer basis.

The Competition is a valuable opportunity for students and legal experts from diverse backgrounds to meet and benefit from each other's experience and knowledge and has become an internationally renowned event on the annual agenda of the dispute resolution community worldwide.

For further information, please take a look at the website www.iccmediationcompetition.org.

ICC International Mediation Conference Series

In 2009, realizing that many conferences on international mediation and commercial dispute resolution generally present the views of mediators and dispute resolution professionals, the ICC International Centre for ADR sought to develop a conference series that would more focus on the needs of international commercial dispute resolution users, i.e. business.

Moreover, the founding committee behind the conference sought to create a conference format that broke away from the usual twenty-minute-powerpoint-presentation-followed-by-ten-minutes-for-question-and-answers, by introducing mock mediations and role plays, case studies, clause drafting workshops and other interactive exercises in order to make the conference not only

more enjoyable and memorable for all involved but also as useful and practical as possible.

Partnering with both the American Bar Association (ABA) Sections of International Law and the Dispute Resolution, the first conference in February 2010 was entitled "Managing Risks and Getting Results: How to use mediation effectively in international business disputes". This introductory conference focused on the business value of a systematic approach to conflict management and, in particular, the economic benefits of mediation for resolving commercial disputes.

For the 2nd edition of the conference series, ICC and CPR joined forces to host "Win-Win Strategies: Tools for corporate dispute management". Building on the economic case for systematic conflict management, the conference, which was held in February 2011, focused on the implementation on in-house dispute management systems for business-to-business conflicts, while highlighting the merits of mediation.

Now in its third year, the ICC International Mediation Conference series has become one of the leading annual events in international commercial dispute resolution. Every year, first-rate speakers from companies such as GE, Bombardier, Siemens, Akzo Nobel, Shell, Nestlé and PriceWaterhouseCoopers, among others, provide real-world insight on the strategic, financial and logistical aspects of dispute resolution.

In 2012, the Association of Corporate Counsel Europe (ACCE) and the Corporate Counsel International Arbitration Group (CCIAG) supported the Conference actively.

For full program details and registration information please visit:

http://www.iccwbo.org/events/registrationrol.aspx?CodeICMS=S1226&langtype=1033.

Latin American Arbitration Congress (Lima, April 23rd and 24th)

"Arbitration in Latin America, Growth Crisis? New and Old problems" is the title with which the Peruvian Arbitration Institute – IPA in Spanish, - supported by the Peruvian Section of the Spanish Arbitration Club, presents us the VI edition of the already traditional Latin American Arbitration Congress to be held in Lima on April 23rd and 24th this year.

Undoubtedly, Peru is going through its best moment in terms of economic growth; its place in the upper fourth of *Doing Business 2012* is a testimony to that. To these awards and financial rankings, we must add the place Peru has reached in the legal world, in concrete, in arbitration law. In fact, Peru is currently considered an attractive site to solve trading disputes through arbitration. Businessmen and investors do not choose any alternative mechanism to solve their disputes other than arbitration. This comes as a result of various factors, among which we could mention the modern Peruvian Arbitration Law of 2008, a highly capable and competitive community of arbitrators, the respect to the judges from the Justice Department and the Constitutional Tribunal, among others.

Hoping to strengthen even more the presence of arbitration in Peru, this year, Peru's capital city will gather the most prestigious arbitration – related professionals from various parts of the world. Some of the current issues to be dealt with are *Multiparty Arbitration, Extension of the Arbitration Agreement to Non-Signatories, Third Party Intervention in Arbitration, Regulatory Arbitration, Government Institutions intervention, Interpretation of the constitutionality of Laws and Legal Rules and Regulations, the Iura Novit Curia Principle in Arbitration and the Application of Law to Disputes, Breach of Contracts, Impossibility or Impracticability of Contracts, Force Majeure, the Ius Variandi of the State in Public Contracts, Estoppel, Venire Contra Factum Proprium Non Valet, Rebus Sic Stantibus, Hardship, Calculation of Damages, Calculation of Loss of Profit, Treble Damages, Mitigation of Damages, Damage in Investment Arbitration, Arbitration in the Fields of Construction, Mining, and Telecommunications; the New CCI Arbitration Rules (2012),* among others.

Following the success of previous years, the Latin American Arbitration Congress has become the most important academic and professional activity in South America, not only for the richness of its topics but also for getting together renown arbitrators, representatives of prestigious firms around the world, judges, lawyers, business people, state representatives, etc.

On this opportunity, the venue for the VI Latin American Arbitration Congress will be Telefónica del Perú Auditorium: 1155, Arequipa Avenue, Cercado de Lima.

For further information, please feel free to contact VI Latin American Arbitration Congress President, Carlos A. Soto (csoto@munizlaw.com; csoto@peruarbitraje.org), Peruvian Arbitration Institute – IPA Phones: (51-1) 222 3397, (51-1) 221 7841 , (51-1) 98750-3656.