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AIA Upcoming Events

Intensive International Arbitration Training Program

with particular focus on India

LOCATION: Chennai, Tamil Nadu, India

Consisting of sessions on four consecutive

Saturday's (January 5, 12, 19 and 26, 2013)

AIA will conduct the training in association with the

Nani Palkhivala Arbitration Center, India.

To register and for more information visit www.nparbitration.in

EMTPJ 2012 Experience

by Piet Vandeputte

For the third time in three consecutive years, the Association for International Arbitration (AIA) organized its European Mediation Training for Practitioners of Justice (EMTPJ) from the September 3rd until September 15th, 2012. The 100 hour course is very intensive and demanding for the participants. The lectures and practical sessions last for two weeks from Monday to Friday. What the students get out of the program is definitely worth the efforts taken.

First of all, there are exceptionally qualified and experienced trainers from Australia, Russia, Great-Britain, Italy, Germany, the Netherlands and Belgium. All trainers have a high degree of experience, not only in the practice of mediation, but also in the teaching and training field. Theoretical discussions and analysis are not separated from the practical training. For instance, in lectures such as "Conflict theory and mediation" or "Analytical study of conflict resolutions" there were practical negotiation exercises. Theory and practice are intertwined. In the words of Philip Glass: "Between theory and practice, some talk as they were two – making a separation and difference between them. Yet, wise men know that both can be gained on applying oneself whole-heartedly to one" (Satyagraha). It could be said that in this European Mediation Training you deeply engage in mediation in all of its practical and theoretical aspects.

One of the main reasons why I took the course was that it allowed me, in just two intensive weeks, to acquire the essential knowledge and skills to start up a mediation practice, or else continue the existent practice with more confidence and know-how.

The organizers of EMTPJ are constantly looking for ways to improve the high quality of their mediation training. This year they had Dr. Paul R. Gibson, a very experienced Australian mediator and mediation trainer, to assist as a co-trainer in more than half of the sessions. I am sure trainers, as well as trainees, would agree to say that they have benefited immensely from Dr. Gibson's input.

For the first time the organizers also managed to assemble all the texts of the lectures in the book: "European Mediation Training for Practitioners of Justice, A Guide to European Mediation", AIA (ed.). This book is not only a great help for many trainees to come, but I am confident that the contributions of the renowned authors will also be very much appreciated by other trainers and mediators.

The intensive hours spent together with all trainees, gave me the opportunity to know everyone very well and dream of maybe visiting such places as Trinidad and Tobago, Latvia, Cyprus, USA (New York and Miami), Italy, Spain, and France (Paris) sometime in the future. Thanks to this melting pot of cultures and personalities our mediation exercises always had a lot of "cross-cultural and international issues to manage" (Paul R. Gibson, o.c. "International Mediation", p. 27) which gave us unforgettable joy.



"European Mediation Training for Practitioners of Justice" (with DVD)

This book may be regarded as the unique guide on mediation in Europe and on how to become an EU qualified mediator. It is of particular interest for those willing to practice mediation. The enclosed DVD contains a mock mediation conducted during a regular practical session of EMTPJ 2011, which is commented by one of the EMTPJ lecturers.

For further information please visit our website: <http://www.arbitration-adr.org/>

Venezuela's Withdrawal from the ICSID Convention

by Missuly Clark

The Bolivarian Republic of Venezuela's exit from the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1966 (the ICSID Convention) came into effect on 25 July, 2012, after the country made its official written notification of denunciation before the World Bank last 24 January 2012. It is the third country after Bolivia in 2007 and Ecuador in 2009 that withdraws from the Convention.

The Ministry of Foreign Affairs of Venezuela made an official press release on 25 January 2012 announcing that the country acceded to the ICSID Convention in 1993 by "a decision of a provisional and weak government, devoid of popular legitimacy, and under the pressure of transnational economic sectors involved in the dismantling of Venezuela's national sovereignty." Moreover, it mentioned that "the Bolivarian Government has acted in order to protect the right of the Venezuelan people to determine the strategic orientations of the economic and social life of the nation, an international jurisdiction that has ruled in favor of transnational interests 232 times in the 234 cases it has taken on throughout its history". According to the Venezuelan government, the main reasons to withdraw from the ICSID Convention were the alleged partiality of the arbitration panels in favor of investors, the incompatibility of the Convention with Venezuelan Constitution and the violation of the country's national sovereignty.

Venezuela also argues that article 151 of the 1999 Constitution invalidates any consent to ICSID jurisdiction under the Convention because this article states that any controversies that cannot be solved amicably by the parties shall be resolved by the competent courts of Venezuela.

The fact that Venezuela withdrew from the ICSID Convention does not have any legal effects on pending claims against this country. Venezuela has 20 cases pending at ICSID, which are not affected by its denunciation of the ICSID Convention. In accordance with article 71 of the ICSID Convention, "any Contracting State may denounce this Convention by written notice to the depositary of this Convention. The denunciation shall take effect six months after receipt of such notice". This means foreign investors were still able to assert new claims during the six months sunset period between 25 January and 25 July 2012.

Despite Venezuela's withdrawal from the ICSID Convention investors are still protected and can present claims against Venezuela under the Bilateral Investment Treaties (BITs) ratified by their government. There are 26 BITs in force that provide the opportunity to arbitrate alternatively under the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules.

The Russian-Canadian miner Rusoro Mining Ltd. became the latest company to file a request for arbitration against Venezuela before the ICSID tribunal on 17 July 2012, pursuant to the agreement between the Government of Canada and the Government of the Bolivarian Republic of Venezuela for the Promotion and Protection of Investments (the Treaty), after the country nationalized its gold industry. This case was filed within the six month sunset period established in the Convention.

On 16 September 2011, the Venezuelan government, through publication in the Official Gazette of Venezuela, enacted a law-decree No. 8413 (Decree), which reserved to Venezuela exclusive rights for the exploitation and explo-

ration of gold in the country. According to the Decree, the government will hold at least 55 percent of any joint ventures and all the gold production has to be sold to the Venezuelan government. The Decree also stipulated that mining companies, in this case Rusoro, had 90 days from 16 September 2011 to negotiate the terms and conditions of the forced migration of mining assets to a joint venture, and including the compensation to Rusoro for assets transferred to the joint venture as a result of the expropriation. If the Company was unable to agree upon these terms and conditions within the designated time period, 100% of Rusoro's mining concessions, related contracts and assets would revert to the Venezuelan government.

In April 2012, all of Rusoro's assets and operations were transferred to Compania General de Minería de Venezuela C.A. (CGV Minervan), a Venezuelan State gold mine. This company did not manage to re-establish production levels at the mining concessions that were expropriated from Rusoro.

Andre Agapov, Rusoro's President and Chief Executive Officer said, "The Venezuelan Government's actions have resulted in significant loss to the Company and its shareholders. For several months we have attempted to find an amicable resolution to the dispute with the Venezuelan Government, but in the end, in light of the Government's apparent unwillingness to look for an amicable resolution, it became the Company's sole recourse to commence international arbitration. Even though we are disappointed that we could not reach an amicable resolution to the dispute, we firmly believe in our arbitration case and the pursuit of fair-value compensation for the loss of our large investment in Venezuela." This case is clearly a breach of the treaty's protection against expropriation and protection of investors since Rusoro's assets were taken by the government without compensation.

According to the ICSID website, the proceedings in this case are still pending and the Tribunal has not been constituted yet. Many people will be expecting the future results of pending arbitrations against Venezuela, since its withdrawal from the ICSID Convention carries important consequences for current and prospective foreign investors. This decision affects potential investment in the country and its credibility, since most investors and companies will be reluctant to invest with the high risk of expropriation.

Book Review: The WTO Dispute Settlement System Challenges of the Environment, Legitimacy and Fragmentation by Dmytro Galagan

The book "The WTO Dispute Settlement System: Challenges of the Environment, Legitimacy and Fragmentation" is an edited and updated version of Kati Kulovesi's doctoral dissertation, defended at the London School of Economics and Political Science (LSE). This publication

is the thirty-seventh volume of the Global Trade Law series, published by Wolters Kluwer Law & Business.



The author analyzes the correlation between protecting economic interests and preserving environment, with particular focus on the role of the World Trade Organization (WTO) dispute settlement system in resolving trade-environment conflicts. The core of the book is devoted to consideration of concerns over (i) the WTO and the so-called "linkage issues", such as environmental protection, labour standards, and investment; (ii) the possibility for the WTO to apply rules of international law not reflected in the WTO agreements, for instance, those on environmental protection; and (iii) the lack of democratic accountability of the WTO dispute settlement system in matters of great public interest. The study explores in great detail three international trade law cases, which are *Shrimp-Turtle*, *Hormones*, and *Biotech*.

The book consists of seven chapters and is divided into four parts, namely (1) Introduction, (2) Overview: The WTO, Legitimacy and the Environment, (3) Analysis: The WTO Dispute Settlement System, Legitimacy and Fragmentation, and (4) Conclusions.

The first part of the book is titled Challenges of the Environment, Legitimacy and Fragmentation in the WTO Dispute Settlement System. It states that the WTO dispute settlement system was not originally designed to solve controversies related to trade and environment, issues of legitimacy, globalization and fragmentation of international law, but was aimed at a relatively narrow area of international trade disputes. Thus, as the introduction explains, this book is focused on the legitimacy of the WTO dispute settlement especially in the context of disputes involving environmental concerns.

Following the introduction, the second part of this publication consists of four chapters. In Chapter 1 the author analyzes the debate over the legitimacy of the WTO, in particular, criticism of the GATT/WTO system and of the free trade in general, and explains the concept of legitimacy and its relevance. Chapter 2 starts with the description of the so-called "linkage challenges", such as environmental protection, labour, and investment. It focuses on fragmentation of international law, its dissolution into highly specialized spheres, and concludes by highlighting of the relationship between the WTO and environmental protection. Chapter 3 proceeds further with environmental disputes and the WTO dispute settlement system, it speaks about such important cases as *Tuna-Dolphin*, *Shrimp-Turtle*, *Asbestos*, *Hormones I*, *Hormones II*, *Biotech*, and other disputes concerning Article XX of the GATT, the TBT Agreement and the SPS Agreement. The last title of the first part, Chapter 5, gives an overview of the role of international law in the WTO dispute settlement system in light of provisions of the WTO agreements, academic debate, WTO jurisprudence, Article 31.3 (c) of the Vienna Convention on the Law of Treaties, and international law as factual evidence.

The third part of the book comprises chapters 5 to 7. Chapter 5 is an elaboration of chapters 3 and 4, and it starts with the assessment of references to international environmental law in *Shrimp-Turtle* dispute, proceeds with the precautionary principle developed in *Hormones* case, and concludes with critical assessment of the *Biotech* panel report. Chapter 6 begins with the examination of limits of legitimacy of the WTO dispute settlement system due to the separation of adjudicative and legislative functions within the WTO institutions, continues with the distinction between roles of the WTO dispute settlement system and of the national authorities, and ends with the analysis of the legitimacy of the WTO dispute settlement proceedings with respect to transparency, access to information, public participation, and *amicus curiae* briefs. Chapter 7 deals with the issue of frag-

mentation of international law as a challenge for the WTO dispute settlement system, with special focus on the case of climate change. In particular, the author reviews the Fourth Assessment Report (AR4) by the Intergovernmental Panel on Climate Change (IPCC), the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, and identifies possible scenarios of conflicts of those instruments with the WTO agreements.

The final part of the book, titled *Striking the Right Balances*, presents the conclusions reached by the author, namely that present design of the WTO dispute settlement system does not fully equip it to deal with all tensions related to fragmentation and specialization of international law, and the WTO dispute settlement system still has legitimacy challenges to overcome.

Overall, this book would be of special interest and importance to lawyers practicing international trade law and environmental law, governmental officials dealing with trade and environmental policy, as well as academics and students. It provides readers with valuable insights into the relations between the WTO dispute settlement system and international law in its present highly specialized and fragmented state.

For further information about the book and where to purchase it, please visit the Wolters Kluwer website:

<http://www.kluwerlaw.com/Catalogue/titleinfo.htm?ProdiD=9041134069>

AIA Members get a 10% discount!

Setting Aside of the Award and Interim Measures: Opinion of the Supreme Court of India by Yaroslava Sorokhtey

Importance of the case

On 6 September 2012 the Supreme Court of India made a final decision in the handed *Bharat Aluminium Co. vs. Kaiser Aluminium Technical Services, Inc.* case (Bharat case). This decision is crucial for the future development of arbitration in India.

This decision makes it impossible for Indian courts to set aside awards or issue interim measures regarding the arbitrations seated outside India. International arbitration in India automatically becomes a more predictable and reliable method of dispute resolution.

Background

Before Bharat case there had been another precedent - *Bhatia International vs. Bulk Trading S. A.* case (Bhatia International case) - which basically allowed Indian courts to render interim measures even if parties chose as a seat of arbitration place other than India. The decision based on the fact that the law applicable to the substantive part of the contract was Indian law.

Previous decisions of the Indian courts were based on the provisions of the Indian Arbitration and Conciliation Act 1996 which follows the UNCITRAL Model Law. In Bhatia International case the court held that Part I of the Indian Arbitration and Conciliation Act 1996 applied equally to arbitrations seated in and outside India. It



held that any arbitral award that contradicted to Indian statute was illegal and contrary to public policy and the court had the right to set it aside. And of course this decision forced foreign investors that do business in India to choose another seat of arbitration (Dipen Sabharwal, Alok Ray, Nandan Nelivigi, International Arbitration Practice India Practice, White&Case).

In Bharat case the Supreme Court overruled the Bhatia International case decision.

Main questions to the Court

The main question in Bharat case was whether Part I of the Indian Arbitration and Conciliation Act 1996 applies in cases where the seat of arbitration is outside India. This question had previously been addressed in Bhatia International case where the court ruled that unless the parties expressly or impliedly excluded Part I of the Act, it would apply to foreign arbitration awards. (Ashutosh Ray, Year 2012: Harbinger of Change for Indian Arbitration?, Journal of International Arbitration, Kluwer Law International 2012 Volume 29 Issue 3, pp. 345 – 354, Year 2012: Harbinger of Change for Indian Arbitration? Ashutosh Ray)

Reasoning of the Court

The decision in Bharat case directly overturns the Supreme Court's prior decision in Bhatia International case. The court interpreted the words used in section 48(1)(e), i.e. 'enforcement of a foreign award may be refused ... if the award ... has been set aside ... by a competent authority of the country in which, or under the law of which, that award was made'. It contrasted the same with the words used in section 48(1)(a), i.e. 'enforcement of a foreign award may be refused ... if the said agreement [arbitration agreement] is not valid under the law to which the parties have subjected it, or failing any indication thereon, under the law of the country where the award was made'. The main discussion was if the language used in the sentences mentioned above is different in the two sections – the court decided that there was a big difference between those two provisions. Finally the court held that only the courts of the country where the award was made, or the courts of the country under whose procedural law the award was made, would have jurisdiction to set aside the award. (Alok Jain, Yet Another Misad-Venture by Indian Courts in the Satyam Judgment? in William W. Park (ed), Arbitration International, (Kluwer Law International 2010 Volume 26 Issue 2) pp. 251 - 280vi. Bharat Aluminum Co. Ltd v. Kaiser Aluminum Technical Services Inc.)

The Supreme Court has confirmed that seat of arbitration is a very important issue in the whole arbitration proceedings and choice of the parties. This means that Indian courts will have jurisdiction over those arbitral awards (where the seat of arbitration is outside India) which are sought to be enforced in India in accordance with the provisions contained in Part II of the Act. (Marking their Territory: Bharat Aluminum v Kaiser Aluminum Technical Services (2012), By Umer Akram Chaudhry, Legaleidescope)

Consequences of the decision

The court in Bharat case clarified that its decision would apply 'to all the arbitration agreements executed hereafter' - after 6 September 2012. This means that when a dispute arises in relation to an agreement executed prior to 6 September 2012, it can be argued whether this reasoning of the court should apply and not the one decided in Bhatia case. Moreover, since Part I of the Act would not apply to arbitrations seated outside India, now it would be impossible to obtain an interim remedy from the Indian courts. The interim order would not be qualified as a 'judgment' or 'decree' for the purpose of Section 13 and Section 44A of the Code of

Civil Procedure 1908. Therefore, it could happen that when the final award is rendered the Indian party may hide its assets and there could be no assets against which the award may be enforced.

Book Review: Fifteen Years of NAFTA Chapter 11 Arbitration by Dmytro Galagan



Fifteen Years of NAFTA Chapter 11 Arbitration (Frédéric Bachand and Emmanuel Gaillard, eds.) was published in September 2011 as the seventh title of the International Arbitration Institute (IAI) Series on International Arbitration. This publication is the result of the conference devoted to the fifteenth anniversary of Chapter 11 of the North American Free Trade Agreement (NAFTA), which was held at McGill University on 25 September, 2009.

The book consists of four parts, divided into nine separate articles, and five annexes.

The first part of the book, titled *The Broader Context*, begins with an article by Thomas E. Carbonneau, *Is NAFTA Arbitration "International"*, which reviews, in particular, national laws on international commercial arbitration, features and practice of NAFTA arbitration, including *Methanex*, *Loewen*, and *Softwood Lumber* cases, to assess whether it is an authentic international form of arbitration or rather a national, although a *sui generis*, form of arbitral adjudication of disputes. The next article is *NAFTA at Fifteen – A View from ICSID* by Meg Kinnear that compares the historic growth in the caseload of NAFTA and ICSID, substantial and procedural overlaps between these two systems, and concludes with an analysis of the future role of ICSID in NAFTA and non-NAFTA cases.

The second part covers procedural issues of NAFTA Chapter 11 arbitration. It starts with an article on *Local Remedies under NAFTA Chapter 11* by William S. Dodge, which deals with the relationship of domestic law and Chapter 11, choice of remedies, exhaustion of remedies, and *res judicata* effect of the decisions of domestic courts. Further, Armand de Mestral in his article *Lessons of Chapter 11: Procedural Integrity and Systemic Integrity* focuses on such aspects of consolidation under NAFTA Article 1126, as the questions of fact or law in common, fair and equitable resolution of claims, consent and party autonomy, and procedural economy, as well as issues of systemic integrity revealed by arbitration under NAFTA Chapter 11, including *HFCS*, *Softwood Lumber*, *Merill & Ring*, and *CANACAR* cases. Finally, *Judicial Review of NAFTA Chapter 11 Arbitral Awards* by Henri C. Alvarez analyses relevant court decisions of Canadian, American and Mexican courts, applicable standards of review, limitation periods and procedural issues.

The third part is dedicated to substantive issues. Here, the article *Interpretive Powers of the Free Trade Commission and the Rule of Law* by Gabrielle Kaufmann-Kohler is based on the examination of the treaty framework, the FTC's interpretation of 31 July, 2011, and of the effects of the interpretive powers on the rule of law in light of promulgation and clarity, prospectively and non-retroactivity, congruence and fundamental rights. Next,



Andrea K. Bjorklund in her article NAFTA Chapter 11 and Environment: An Assessment after Fifteen Years focuses on, first, the definition of regulatory expropriation in the U.S. Model Bilateral Investment Treaty of 2004 and the Canadian Model Investment Promotion and Protection Agreement of 2003, as well as in the other post-NAFTA BITs and FTAs concluded by those states; second, on the effect of inclusion of environmental standards into NAFTA on subsequent trade agreements; and, third, on the development of transparency norms in investment arbitration. Lastly, *The Future of NAFTA Chapter 11: The Next Fifteen Years* by Luis González García attempts to answer two important questions: Has NAFTA Chapter 11 been a success? Which parts, if any, of Chapter 11 need to be either clarified or developed? In this respect, the author analyzes the need for an appellate body for NAFTA disputes; issues of the legitimacy and transparency of the system; controversies related to provisions on fair and equitable treatment (FET) and expropriation.

The fourth part of the book, *The States' Perspectives*, comprises an article titled *NAFTA Chapter 11 at Fifteen: A Few Key Questions Resolved* by Mark Feldman, who considers the two important issues developed in NAFTA Chapter 11 arbitrations: first, conclusions of *Bayview and Canadian Cattlemen* cases that NAFTA Chapter 11 claims only investments made, or sought to be made, in the territory of the host State; and, second, a series of awards, including *Glamis*, that confirmed that the minimum requirement of the treatment under NAFTA Article 1105 sets a strict standard that requires a high threshold to be made for a finding of breach.

As a conclusion, this publication is a collection of essays written by leading experts on NAFTA from legal practice, academia and government. It would be an asset for everyone interested in investor-state arbitration, including governmental officers, practicing attorneys, policy makers, professors, students, and international investors willing to know more about protection of their investments.

For further information about the book and where to purchase it, please visit the website of Juris Publishing, Inc.: http://www.jurispub.com/cart.php?m=product_detail&p=9449

"Barometer" of Mediation in Belgium: Survey of bMediation

In June 2012 the mediation center bMediation in collaboration with the Belgian Federal Mediation Commission (BFMC) made a survey of the Belgian mediation market. The BFMC forwarded a questionnaire to the mediators accredited by the BFMC. However accreditation with the BFMC was not a condition for participation in the survey and the survey was also open to the general public. Consequently, it is not always clear whether the answers have been given by the accredited or non-accredited mediators.

The most significant results of the survey are as follows:

- there have been 416 answers: 55 % of the answers were from independent mediators not linked to any organizations; 30% of the answers were from mediators – members of bMediation; 21 % of the answers were from mediators linked to 42 different small organizations having at least 10 members and 3 % were members of some foreign organizations;
- 39,6% of those who answered to the questions of the survey were accredited in the past but at this point their ac-

creditation has been withdrawn;

- by the middle of 2012 the number of accreditations with the BFMC amounted to 1207. In Belgium mediators can be recognized in family, civil and commercial or social matters. The same person can be accredited in more than one field; consequently, it is quite possible that the number 1207 does not reflect the true number of accredited mediators.
- 54, 60 % of the mediators work in Flanders, 34, 40 % in Brussels and 27,90 % in Wallonia. 20 % of the mediators work in other regions;
- 20 % of the mediators started providing mediation services before the law of 2005, 45,50 % of the mediators have less than 3 years of experience;
- 37 % of the Belgian mediators are also lawyers;
- 40 % of mediators have never conducted a single mediation case and do not have any practical experience;
- most mediation cases relate to family matters. However it might surprise practitioners that 32 % of mediation cases belong to the domain of civil and commercial matters and 17% to labor matters;
- court instigated mediation is limited to 13 % and mediation centers are involved only in 15 % of mediation cases. More than 50 % of the cases come to mediators through the word of mouth;
- 60 % of the international mediation is done by only 12 mediators;
- mediation in family matters lasts usually 5 sessions of 1,30-2 hours each, commercial mediation lasts 2-3 sessions of 4 hours each;
- in commercial matters the cost of mediation is between 500 – 1500 Euros;
- promotion of the mediators' services is done primarily through internet, business cards and letterheads. 25 % of the mediators do not make any promotion.

Book Review:

The Search for Truth in Arbitration: Is Finding the Truth What Dispute Resolution Is About? by Missuly Clark



This 35th volume of the Association Suisse de l'Arbitrage (ASA) Special Series, contains the written version of the presentations given at the ASA 2009 Annual Conference in Zurich, Switzerland, on "The Search for "Truth" in Arbitration: Is finding the Truth what Dispute Resolution is about?". This book edited by Markim Wirth, Christina Rouvinez & Joachim Knoll, consists of 11 chapters. It explores the concept and the relevance of "truth" in dispute resolution and specifically in commercial arbitration; the different notions and perspectives of truth in different cultures; and the consequences of these different perspectives and approaches for the practice of international arbitration.

This book reviews several perspectives for the search of truth



in arbitration, and the concept and relevance of "truth" in dispute resolution by analyzing the German, Asian, and Arabic perspectives. It also explains the process of document production or discovery in international arbitration from a civil and common law standpoint. The book examines first the production or discovery process and then it outlines the rules and principles acceptable for international arbitration practitioners.

The last several articles of the book discuss the formalism in arbitral proceedings.

For further information about the book and where to purchase it, please visit the website of Juris Publishing, Inc.: http://www.jurispub.com/cart.php?m=product_detail&p=10519

First ICSID Arbitration Filed against Belgium

by Dmytro Galagan

Ping An Life Insurance Company (Ping An) has recently filed a claim with the International Centre for Settlement of Investment Disputes (ICSID) against The Kingdom of Belgium (Belgium) in an attempt to recover losses it suffered as a result of collapse of Fortis bank, in a first ICSID case to be started against Belgium.

Ping An is the second-biggest Chinese insurer. In 2007, it invested RMB23.9bn into Fortis, a Belgian-Dutch financial services group, but had to write off RMB22.8bn a year later. Fortis troubles started in spring of 2007 when it experienced critical problems with raising cash needed to finance the joint acquisition of a Dutch bank ABN AMRO, as a member of a consortium that also included Royal Bank of Scotland and Banco Santander. To prevent the collapse of one of the leading banks of Benelux countries, it was bailed out, and its Belgian banking operations were subsequently sold to BNP Paribas, a move strongly opposed by shareholders. Ping An, which held about 5 per cent of Fortis' stock, voted against the sale. Later, it was reported that Ping An had sought assistance of the Chinese government in pressing the governments of Belgium, Luxemburg and the Netherlands to pay the compensation for the losses of Ping An's investment. The filing of the claim with the ICSID evidences the fact that negotiations have not resolved the tensions between Ping An and Belgian government.

The ICSID claim was filed on September 19, 2012 and reported by the [Investment Arbitration Reporter news service](#), but the details of the request for arbitration have not been yet made public. Ping An will be represented by Kirkland & Ellis LLP with London arbitration head Chris Colbridge leading the team. Belgium has not yet instructed its counsel.

New International Arbitration Survey to Examine Corporate Choices Across Industry Sectors

by Rémy Gerbay

How different industries use arbitration as a way to resolve commercial disputes is the subject of a new survey conducted by the School of International Arbitration at Queen Mary, University of London.

The views of in-house counsel from around the world are being sought for the study, which is sponsored by PricewaterhouseCoopers (PwC).

This is the fifth international arbitration survey conducted by the School of International Arbitration at QM, and the third sponsored by PwC. The final report is expected to be launched in early 2013.

Past surveys have looked at such issues as corporate attitudes and choices in respect of arbitration, and 'best practice' and procedure in general, but this is the first time that an industry approach is taken.

"This survey, which seeks the views of in-house counsel exclusively, focuses on how arbitration, as a dispute resolution mechanism, is perceived and used in various sectors of the economy, with an emphasis on some of today's fastest growing sectors, including construction, energy and natural resources, telecommunications and banking and financial services" comments Professor Loukas Mistelis, Head of the School of International Arbitration.

"This should provide useful insight on how choices and preferences in respect of arbitration vary from one sector to another. Ultimately, the project aims to contribute to the understanding of how arbitration can continue to meet the needs of international businesses in tomorrow's economy," says Rémy Gerbay, PwC Research Fellow at QM.

The following themes will be explored in the 2013 survey:

- Use of international arbitration vis-a-vis other ADR mechanisms: Which dispute resolution mechanisms (e.g. arbitration, mediation and adjudication) are most commonly used in different industry sectors, and why? What contributes to the attractiveness/un-attractiveness of arbitration in different industries?
- Choices and preferences in respect of service providers: How service providers (i.e. outside counsel, experts and arbitral institutions) are selected by companies engaged in international arbitrations? Do such choices vary from industry to industry?
- Funding: How are arbitral proceedings funded? What are the attitudes of companies regarding internal budgeting, third-party funding, use of insurance policies and flexible legal fees?

The questionnaire for the survey can be accessed at www.arbitrationonline.org/research/2013.

Corporate counsel are strongly encouraged to participate, and should feel free to circulate the survey. Questionnaire responses will be followed by individual interviews for those willing to participate.

About the School of International Arbitration

The School of International Arbitration at Queen Mary, University of London was established in 1985 as part of the Centre for Commercial Studies to promote advanced teaching and research in the law and practice affecting international arbitration. Today the School is widely acknowledged as the leading teaching and research centre on international arbitration in the world. Almost all its courses are at post-graduate level. In its 25 year existence the School has had over 2,000 students from over 80 countries all over the world.

The Mentoring Program in Egypt

AIA representative office in Egypt "North Egypt Chamber for Dispute Resolution" (NECDR) came up with the initiative to establish a Mentoring Program in ADR. It brought together Mentors, ADR experts, who volunteered to participate in the Pro-



gram. They agreed to share their knowledge and experience with the Fellows, who are university students, ADR researchers, and inexperienced ADR practitioners who want to take ADR as their career, but need some help in terms of ADR knowledge and ADR experience. At this point there are 18 Mentors participating in the Mentoring Program and 4 Program Allied Entities. Each Fellow will be assigned a Mentor. The program is developed to promote ADR among young professionals

New Branch of CIETAC in Hong Kong

A new branch of China's International Arbitration Centre (CIAC) was opened in Hong Kong. The name of the branch is "The Hong Kong Arbitration Centre" which is a part of the China International Economic and Trade Arbitration Commission (CIETAC). This is the first branch of CIAC outside China. Awards made by the centre will be enforceable in all countries signatories to NY Convention. CIETAC disputes seated in Hong Kong will be heard under the region's own Arbitration Ordinance, which came into effect in June 2011. CIETAC Hong Kong Arbitration Centre will function together with already existing arbitration institutions in Hong Kong such as Hong Kong International Arbitration Centre and the Secretariat of the International Chamber of Commerce International Court of Arbitration (Asia Office).

Jean-Flavien Lalive's Passing Away

On 15 August 2012 Jean-Flavien Lalive, partner and founder of the "Lalive" law firm, passed away in Geneva.

Jean-Flavien Lalive was an important figure in international arbitration. He was involved in very important oil and gas cases such as *Sapphire v. Iran*, *Texaco & Calasiatic v. Libya* and *Aminoil v. Kuwait* that became reliable precedents in international commercial arbitration.

Jean-Flavien Lalive also held courses at The Hague Academy of International Law on immunity of jurisdiction of states and international organizations (1953) and on contracts between states or state entities and private persons (1983).

Piet Sander's Contribution to International Arbitration

We regret to inform that Piet Sanders passed away last September after his 100th anniversary. The honorable President and co-founder of the International Council for Commercial Arbitration (ICCA) 1961, co-founder of the Netherlands Arbitration Institute (NAI) 1949, member of the ICC Arbitration Commission since 1949, drafter of the 1986 Dutch Arbitration Act and Emeritus Professor at the Law Faculty, Erasmus University of Rotterdam has left the arbitration community as a founding father.

Well known for his unique international arbitration practice and contribution, Piet Sanders played a crucial role as the principal drafter of the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and contributed to the preparation of the UNCITRAL Arbitration Rules 1976, as a special consultant to the United Nations Commission on International Trade Law.

2012 Report on the Efficiency of Justice

by Missuly Clark

The European Commission for the Efficiency of Justice (CEPEJ) was established on 18 September 2002 with Resolution Res (2002)12 of the Committee of Ministers of the Council of Europe. The establishment of CEPEJ, which is ensured by the Directorate General of Human Rights and Legal Affairs, shows the intention of the Council of Europe not only to elaborate international legal instruments, but also to promote a precise knowledge of the judicial systems in Europe and of the different existing tools which enables it to identify any difficulties and facilitate their solution.

The CEPEJ today is a unique body for all European States, made up of qualified experts from the 47 Council of Europe Member States, to assess the efficiency of judicial systems and propose practical tools and measures for elaborating an increasingly efficient service to the citizens.

The aim of the CEPEJ is the improvement of the efficiency and functioning of justice in the Member States, and the development of the implementation of the instruments adopted by the Council of Europe to this end. It also aims to provide policy makers and justice professionals with a practical tool to better understand the operation of the public service of justice in Europe in order to improve its efficiency and its quality in the interest of 800 million Europeans.

In order to carry out these different tasks, the CEPEJ prepares benchmarks, collects and analyses data, defines instruments of measure and means of evaluation, adopts documents (reports, advices, guidelines, action plans, etc), develops contacts with qualified personalities, non-governmental organizations, research institutes and information centres, organizes hearings, promotes networks of legal professionals.

The CEPEJ 2012 report consists of 18 chapters and devotes one of its chapters to alternative dispute resolution (ADR), since its use has been growing in various European states or entities. The use of ADR can help improve judicial efficiency by providing users alternatives to regular judicial proceedings.

In the case of judicial mediation, a judge may refer parties to a mediator if they believe that more satisfactory results can be achieved for both parties. Thirty four states or entities grant legal aid for mediation in judicial procedures.

Regarding arbitration and conciliation, thirty nine states or entities have indicated that arbitration is offered in their dispute resolution system. Conciliation is available in thirty four states or entities, in areas such as family law, labor disputes, etc.

The conclusion of the report on this topic is that ADR continues to be developed in Europe. Italy, Montenegro, Romania, and "the former Yugoslav Republic of Macedonia" have recently launched projects to change the legislation in order to make ADR more effective. In Italy in 2010, a large reform on ADR (Decreto 28/2010) was approved and, since March 2011, a number of matters in the civil sector require that a mandatory mediation procedure is executed before the case can be referred to the court. Recently on 5 March 2012 Spain also enacted a new Mediation Act. Furthermore, more countries continue to offer legal aid for mediation proceedings and this seems to be increasing over the years all over Europe.

September 2012 Conference on Mediation in Lecce, Italy



On 21st September 2012 Grand Hotel Tiziano e dei Congressi in Lecce, Italy hosted a conference on Civil and Commercial Mediation. The conference was organized by the Institute of Mediation and Arbitration of Lecce and it brought together more than 300 participants, 270 of whom are lawyers. The speakers

of the conference addressed major concerns of the Italian ADR professionals in view of the upcoming decision of Italy's Constitutional Court about mandatory mediation due on October 23rd. Dilyara Nigmatullina, AIA Manager, expounded on the issue "Recent Developments in European Mediation and ADR".

AIA Recommends to Attend

CDR Conference 2012



Commercial Dispute Resolution (CDR) invites you to its conference on November 26-27 in London. A unique and interactive event covering:

- Financial services in litigation;
- A comparative approach to settlement trends from jurisdiction to jurisdiction;
- Cross border litigation: US and European perspectives;
- International arbitration;
- The ins and outs of selecting or replacing arbitrators;
- Mediation, when it's right and how it's done;
- Third party finance, a new horizon in claims management.

The current economic situation needs new strategies, and the topics covered will give general counsel a clearer picture of ADR.

This series of interactive sessions, designed for in house counsels and private practitioners, will cover Litigation, Arbitration, Mediation, and Third-Party Finance. Different jurisdictions, need different strategies; therefore the speakers will be some of the most respected litigators from the UK, the USA and Europe, coming from top law firms such as Skadden, Herbeth Smith, Wolf Thiess, King & Spalding, SJ Berwin ,Hughes, Hubbard and Reed, Quinn Emmanuel.

To reserve places for this events, please contact Alex Fetrot at +44 207 397 7043 or alex.fetrot@glgroup.co.uk.

We are happy to announce that the AIA members will get a special price. Please contact administration@arbitration-adr.org for further details.

Concilia LLC. Presents William Ury, 12 October 2012, Vicenza, Italy

Concilia, founding member of the AIA network of Mediation providers, is considered to be one of Italy's best-known and respected ADR firms in the field of mediation, conciliation, arbitration.

Concilia is now delighted to bring William Ury to Vicenza (at Vicenza fair) for a major training event. William Ury is considered to be one of the greatest trainers and facilitators in the international training scene, a world authority in the field of negotiation.

William Ury has been a consultant and broker for over thirty years and has gained his popularity as the author of the bestseller "The Power of a Positive No".

This course is exclusively European and seats are limited.

An English language brochure, giving details of the event and of how to book a place, is available here:

http://www.concilia.it/william_ury_eng.pdf

Baku Conference:

Arbitrators and Mediators in Settling National and International Disputes

This autumn the city of Baku, Azerbaijan hosts an international working conference on Arbitrators and Mediators in Settling National and International Disputes, which is a part of the series of events on *Arbitration and Mediation in Central and Eastern Europe and Some Asian Countries*.

This conference will focus on several issues, such as the regulation of the status of arbitrators and mediators in certain countries, their relations with parties to disputes and arbitration courts, codes of ethics regarding the conduct of arbitrators and mediators, and other peculiarities of national legal regulations concerning arbitrators and mediators in European and Asian countries.

The organizers of the conference from the Polish side are *The Court of Arbitration at Nowy Tomyśl Chamber of Commerce in Nowy Tomyśl* and *Polish Association for Arbitration and Mediation, Poznań*, and from the Azerbaijan side – *Azerbaijan Arbitration and Mediation Centre, Baku*.

The conference is an open event and participation is free of charge.

Conference languages are English, Russian and Azerbaijani. Presentations will be translated into English. Participants will receive a certificate evidencing participation in the conference.

Conference date: October 25, 2012

Location: Grand Hotel Europe Baku, 1025/30 Tbilisi Avenue, AZ1078 Baku, Azerbaijan

Please address your inquires to the organizers:

In Azerbaijan - Alida Mahmudova, tel.: +994 50 362 78 79, e-mail: alida_ms@yahoo.com

In Poland - Wlodzimierz Brych , tel.: +48 608 080 345, e-mail:

sa@nig.org.pl

