Association for International Arbitration
In Touch

September 2013

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AIA Upcoming Events :

Future of Mediation in Belgium (FMB) Session

LOCATION: VUB University, Brussels
DATE: 19th of December 2013
Email administration@arbitration-adr.org for details

BDC: Brussels Distribution Conference organised by DBB law firm in collaboration with LAWROPE

LOCATION: Palais des Academies, Brussels
DATE: 3rd and 4th of October, 2013
For details, please turn to page 12 of this issue and refer to the website below:
http://www.brusselsdistributionconference.eu/en/bdc

Future of Mediation in Belgium (FMB) Session

The FMB initiative is an initiative that aims to set out a common action plan for the enhancement and promotion of Mediation in Belgium and is supported by all Belgian mediation stakeholders.

The initiative was born following the "Brainstorming on the future of Mediation in Belgium" event which took place at the Palace of Justice in Brussels on the 27/06/2013. The Brainstorming event was introductory in character and considered questions such as the perspective of lawyers on mediation, the costs of mediation and limitations on who mediates as well as where mediation should be placed within ADR.

To this end, Belgian mediation stakeholders gather periodically (at least twice a year) in the form of brainstorming sessions and/or working groups. The meetings are held in English, Dutch and French (without simultaneous translation).

Each session is facilitated (moderated) by the FMB Committee, comprised of Philippe BILLIET (presiding), Dr Ivan VEROUGSTRAETE, Willem MEUWISSEN and Benoit SIMPELAERE. The FMB Committee may be enlarged following further development of the FMB initiative.

The next session is scheduled for the 19.12.2013, where issues such as public and private cost savings through the use of mediation, EU initiatives on consumer ODR and ADR and recent Belgian initiatives on class actions will be discussed.
Email > administration@arbitration-adr.org for details.

In The Wake of The ODR Conference: ODR Brings New Challenges To The E-Commerce Dispute Resolution Framework

by Maria Karampelia

Introductory notes:
The Conference on Online Dispute Resolution (ODR) for Cross-Border E-Commerce Transactions, organized and held by the AIA in the premises of the IES in Brussels on the 18th of September 2013, was successfully completed and its outcomes are proudly presented.

The event attracted leading ODR practitioners worldwide, who merged their expertise and experiences to cover a great range of topics on the emerging field of ODR. The main objectives of the conference were effectively fulfilled. Once the speakers aptly raised the key issues in five distinct presentations, the attendants had the opportunity to subsequently engage thorough discussions and reach some conclusions, acquiring an insight into this constantly evolving field.

Speaker's session:
The first session opened with the speech of Diana Wallis who stressed the importance of the development of Online Dispute Resolution services in the e-commerce context. E-businesses are rapidly growing in number and size and online shopping is mounting over traditional marketplaces.

The internet is already recognized as a global trading platform, where better deals and unlimited choices are offered to the average, even unsophisticated customers. What is left to be done is the creation of effective dispute resolution mechanisms that will enhance the customers' trust in online traders, easily accessible by the final users and able to resemble real-life in-store complaints. From her viewpoint as a former MEP, Diana expressed concerns on the position of an effective ODR process within existing legal systems, including arbitration, and also considered the context of EU legislation.

Following that point, Lukasz Klejnowski, Advisor to MEP Róża Thun, pointed out the basic changes brought by the new *Regulation No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes* and the new *Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes* in the field of ODR and their consequences for consumers and traders.

The new regulation provides for the creation of an online platform, an interactive website uniform for all member states, that will serve as the single entry point for customers and traders willing to resolve out-of-court contractual disputes arising from online sales and the provision of service transactions. Furthermore, the newly introduced acts establish a precise time framework for the relevant procedures, proclaim the information requirements and state the quality criteria of the natural persons involved, following overall a flexible and balanced approach.

From the speaker's perspective, the crucial points of this initiative lie in its actual implementation by the national legal orders and in its technical details. Bearing in mind that consumers shall not be provided with anything less than what they expect, the platform cannot be released before it is translated in every official language of the EU. It should incorporate successfully operating existing ODR systems and become as user friendly as possible.

Finally, Mr Klejnowksi was delighted to remark on the Commission's positive attitude towards the development of the platform, mentioning simultaneously the relatively slow progress of the procedures, and the role that UNCITRAL could play in promoting a similar procedure on a global level.

Thereafter, Patric Illigen, representing the German Mediation Academy, analyzed an interesting categorization of mediation and ODR into automatic, written and live versions and stressed the advantages of live mediation when it comes to the resolution of complex commercial disputes or even child abduction cases. Live mediation allows the parties and the mediator to work concurrently, it facilitates the intervention of third parties, reveals the participants' moods and serves well in cases where there is equality of arms, e.g. in B2B contractual disputes. It is a fast, time and cost effective dispute resolution method. It is also reliable in terms of neutrality.

On the other hand, there are some shortcomings, for example the lack of internationally recognized standards concerning ODR and the inefficient enforceability mechanisms, as pointed out by both the speaker and the discussion panel.

A captivating practical insight was provided by a leading practitioner of ODR in the U.S., Colin Rule, COO of Modria.com in Silicon Valley, who talked about the ODR services provider of the e-commerce giants, such as Ebay, Paypal, Amazon, Rakuten and the Chinese Alibaba.

Mr. Rule used facts and figures to support the argument that consumers prefer quick solutions and avoiding additional costs. Thus they engage in online transactions easily when they know that there is a trustworthy way to solve problems that may occur, proving the high significance of effective ODR services for B2C enterprises.

Influencing marketplaces have the power to enforce the solutions proposed by penalizing their customers, either buyers or sellers, with dismissal once they do not comply. The effective operation of an ODR system results in satisfying solutions for customers, who tend to increase their purchasing activity once satisfied, imposing serious financial returns for the marketplace. In these terms, the latter bears the burden of putting an ODR system in place, so as to attract more buyers, and consequently, more sellers.

Last but not least, Mr. Johan Billiet, president of AIA and partner of Billiet & Co., provided insight in the UNCITRAL's initiatives in the field of ODR. He explained the motives behind the UNCITRAL's draft ODR rules, their main features and their proposed structure. The major criticism in relation to those rules has to do with their practical implementation, which is considered difficult for unsophisticated consumers.

Furthermore, the draft ODR rules become unnecessarily complicated as they appear to be based on the arbitration rules model; such an approach could impose risks provided that these rules serve completely different purposes. The European approach aims for harmonization of the existing consumer ADR schemes and their productive

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cooperation across borders, rather than for a centralized mechanism that would require excessive resources to become viable.

Concluding remarks:
In sum, the conference works highlighted the growing significance of the development of ODR services, the crucial role that the private sector plays in this process and the major improvements that must be promoted. Public agents are unlikely to meet the rapidly evolving needs of e-commerce business participants and the existing legal tools seem inappropriate to provide an effective solution to those disputes.

The private sector works on high quality services, which are simple, widely available user friendly platforms that can produce fast, enforceable and most importantly; efficient solutions. Ultimately, ODR is there to offer a solution where the other means of justice fail and to do so in an efficient manner. Overall, there is no "A" in ODR.

Mediation in Italy: 2013

by Maria Francesca Francese, In Media

At the end of June 2013, the Italian government issued a legislative decree providing urgent measures that also involve important changes to the Italian litigation system. The aim of the decree is to simplify the administrative and regulatory framework, as well as to shorten the duration of civil proceedings, reducing the high level of civil litigation and promoting the use of ADR methods.

This decree reverses a ruling in October 2012, where the Italian Constitutional Court quashed compulsory mediation finding that by enacting the law, the government had exceeded the scope of both the Mediation Directive and Law 69/2009, which empowered the government to adopt a legislative decree introducing administered mediation procedures.

Consequently, mandatory mediation has been reintroduced for a wide range of reserved matters such as: tenancy in common (e.g. in condominiums, real property rights, division of assets, inheritance, family estates, leases of real property and of going concerns, gratuitous loans for use, medical liability, defamation in the press and other media, as well as in the areas of insurance, banking and other financial agreements.

When mandatory mediation was originally introduced in 2011, notable results were brought to light, with more than 220.000 mediations initiated with a settling rate of nearly 50% when both parties participated. This is why the Italian Government pushed for a return to mandatory mediation.

This was an effort to eliminate some of the current backlog of disputes pending before Italian Courts putting forward a revised policy which takes into account at least part of the criticisms that have been made in an obvious solution. Amongst other things, the new discipline allows the litigants to opt-out from the trial at a nominal cost.

The Decree has been converted into a law by the Parliament and it will enter into force by the end of September. If successful, this model could be adopted by other EU member states, which is why mediation in Italy is now under close surveillance.

Book review: Arbitration in Africa: A **Practitioner's Guide**

by Christina Gavriilidou

Even though major changes and developments have been noticed within the realm of international arbitration, most of them located in the Central Europe, Africa was deemed to be a slow-growing continent in this field, mostly due to challenges as regards nation-building.

However, changes were on their way. The emergence of significant African business groups, the growing exploitation of the continent's infinite natural resources, the expansion of cross-border trade and a boost in foreign direct investment across Africa in the recent decades constituted the main driving forces towards the evolution of arbitration.

The book is an excellent guide for practitioners of arbitration as well as students, providing for a thorough analysis of the legislation and current practices within African regions. More specifically, it contains essential information about the legislative provisions, treaty adherence and arbitral practice of the most prominent countries in the African continent.

Practitioners and students can effectively use the book as a reference guide with respect to crucial issues in the arbitration field, such as jurisdictional matters and matters relating to the choice of an appropriate arbitral seat as well as the issue of the enforceability of an arbitral award and its effectiveness.

The book consists of five sections regarding current arbitration practice in the African states, concluding with a thorough analysis of investment arbitration in Africa; Dr Emilia Onyema's chapter on "International Arbitration in the West African States", Jugde Edward Torgbor's contribution on "Arbitration in East Africa: An Overview", Sami Houerbi's "Arbitration in North Africa: An Overview", "The Southern African Development Community and the UNCITRAL Model Law" by Lise Bosman, the chapter of Maitre Philippe Leboulanger and Dr Gaston Kenfack Douajni on "Arbitration under the Common Court of Justice and Arbitration of the OHADA Contracting States" and Karel Daele's chapter on "Investment Arbitration Involving African States".

The concept of the book revolves around the major issues of arbitration practice within African regions, illustrating the growing number of emerging African practitioners and scholars active in the field of international arbitration.

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The UNAMAR Case: Application of the Overriding Mandatory Rules of the Law of the Forum Instead of the *Lex Contractus*?

by Christina Gavriilidou

In a recent arbitration case on 5 April 2012, *United Antwerp Maritime Agencies (UNAMAR) v Navigation Maritime Bulgare (NMB),* the Belgian Supreme Court had to deal with the issue of the applicable law in the dispute at hand. More specifically, the court had to address whether the Belgian law had to be applied, despite the fact that the parties had opted for an arbitration scheme conducted under Bulgarian law. This article focuses on the AG's opinion as far as the dispute is concerned, which is most likely to be adopted by the ECJ as well.

In 2005, UNAMAR and NMB concluded a commercial agency contract. The arbitration agreement in the contract provided for the Bulgarian law to be applied, in line with the principle of the freedom of the parties as to the choice of the law applicable to their contract. The latter principle is guaranteed by the Convention on the law applicable to contractual obligations (Rome Convention), replaced by the Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I Regulation). The agreement also provided that the competent tribunal would be the Sofia Chamber of Commerce and Industry.

In 2009, both UNAMAR and NMB brought actions against each other before the Commercial Court of Antwerp. The ruling of the court was in favour of UNAMAR; the court accepted the application of article 27 of the Belgian Law of 13 April 1995, pursuant to which "any activity carried out by a commercial agent having his principal establishment in Belgium is subject to Belgian law and to the jurisdiction of Belgian courts".

Subsequently, NMB appealed against the above-mentioned decision before the Court of Appeal of Antwerp. The court ruled in favour of NMB, noting that the Belgian Law of 13 April 1995 is not applicable as it does not form part of Belgian international public policy.

In 2011, UNAMAR appealed against the latter decision before the Belgian Supreme Court which suspended the proceedings and submitted a preliminary question to the ECJ:

"Having regard, not least, to the classification under Belgian law of the provisions at issue in this case (Articles 18, 20 and 21 of the Belgian Law of 13 April 1995 relating to commercial agency contracts) as special mandatory rules of law within the terms of Article 7(2) of the Rome Convention, must Articles 3 and 7(2) of the Rome Convention, read, as appropriate, in conjunction with 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, be interpreted as meaning that special mandatory rules of law of the forum that offer wider protection than the minimum laid down by Directive 86/653/EEC may be applied to the contract, even if it appears that the law applicable to the contract is the law of another Member State of the European Union in which the minimum protection provided by Directive 86/653/EEC has also been implemented?"

The AG's main arguments revolved around the issue of determination, by right of the Rome convention, of the applicable law in the contract in question. It is worth mentioning that the Belgian legislature, in implementing the Directive of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents, laid down provisions that offer wider protection to commercial agents than that of the Directive.

The major debate, thus, focuses on whether the provisions of Bulgarian law, being the *lex contractus,* can be deemed as inapplicable in light of the designation of the provisions of Belgian law as overriding mandatory rules of the law of the forum, taking into account the wider protection that the provisions of the Belgian law confers on commercial agents.

Initially, the AG argues that, pursuant to Article 3(1) of the Rome Convention, the main principle is the chosen law by the parties as being applicable to the contract; When the parties express a clear intention in a choice-of-law clause, there is a rebuttable presumption that this is the *proper law* because it reflects the parties' freedom of contract and it produces certainty of outcome.

Nevertheless, the discretion of the parties as to the choice of law shall be restricted, inter alia, by the overriding mandatory rules of the law of the forum which prevail over any other provisions, according to the wording of article 7(2) of the Rome Convention.

Although the Rome Convention ensures the overriding character of the mandatory provisions of the law of the forum, it does not provide for the definition of the latter provisions. Regard must be given, thus, to the respective interpretation by the forum of these provisions as mandatory; the national authorities of the Member States possess wide discretion in this regard, in contrast with the courts which are *de jure* deprived of this right.

As the AG notices, although the definition of the "overriding mandatory provisions" in the case *Arblade* mainly revolved around the concept of the preservation of a state's political, social and economic interests, one must not disregard the fact that any assessment as to the overriding mandatory character of a provision should be conducted in the light of the specific case at issue and the public interests that called for its enactment.

In this regard, Member States are competent to determine in which circumstances the public interests are affected and consequently to define the respective provisions protecting them as overriding mandatory rules.

However, the AG stresses the importance of the deference the Member States should show to Community law as having precedence over secondary and national laws.

It follows that the invocation of the mandatory provisions of the forum by the Member States cannot constitute an unjustified obstacle in exercising the rights and freedoms that are entrenched in the Conventions.

The AG makes a very notable distinction between the minimum and maximum harmonisation with respect to the Directive's objective to coordinate national laws. Whenever a directive aims at coordinating national laws providing for minimum harmonisation, the Member States are competent to introduce stricter provisions than those of the directive; more specifically, Member States can broaden the scope of application as well as the scope of protection that the directive lays down.

As the AG points out, in case of a minimum harmonisation regime enacted by the Community legislature, the provisions laid down by the Member States broadening the scope of application/protection of a directive can also, when appropriate, be interpreted as overriding mandatory provisions of the law of the forum and as a consequence outweigh the provisions of the law originally chosen by the parties to govern their dispute; that includes the situation where the member state whose law has been chosen by the parties has befittingly implemented the respective directive.

The competence of the Member States to define and apply, in line with article 7(2) of the Rome Convention, the overriding mandatory provisions of the law of the forum depends mainly on the will of national legislatures to protect the public interests they deem crucial for the economic, political or social development of their country.

The AG stresses the minimum harmonisation technique that has been adopted by the Commercial Agency directive and comes to the conclusion - taking also into consideration the respective statements of the Belgian government - that the Belgian law's scope of application and protection is broader than that of the Directive.

Thus, the provisions of the Belgian law, implementing the Directive 86/653/EEC of 18 December 1986, can be interpreted by the courts as overriding mandatory provisions of the law of the forum, on the grounds that the Belgian legislature's aim is to ensure the protection of some specific overriding public interests.

In the *Ingmar* case *(Ingmar GB Ltd v Eaton Leonard Technologies Inc., C-381/98)* the court, in scrutinising the respective provisions, based its thoughts on the fact that the provisions served the realisation of the Convention's objectives and that the ultimate goal of the provisions was a protectionist concept closely connected with commercial agents.

Hence, it can be inferred that in interpreting national provisions in the context of their overriding mandatory character, regard should be paid in the protective framework encompassing the respective provisions.

In conclusion, the national court must not be precluded from applying the overriding mandatory provisions of the law of the forum instead of the law chosen by the parties, in the case that the former, in implementing the respective directive, opted for a wider application and protection regime in contrast with the latter.

The legal basis for the application of the overriding mandatory provisions of the law of the forum will be article 7(2) of the Rome Convention which, contrarily to Rome I Regulation, leaves more space for applying the overriding mandatory rules with respect to a dispute where the parties have chosen another national law to govern their contract.

Book Review: Arbitration in England with chapters on Scotland and Ireland

by Rafael Berdaguer Hijano

England is recognized as a leading centre for arbitration, both international and domestic. Although many internationally accepted practices have developed, as in other countries there remain distinctive English arbitration laws and practices which are all described in *"Arbitration in England with chapters on Scotland and Ireland."*

The authors of this book are Julian D.M. Lew, QC, Harris Bor, Gregory Fullelove and Joanne Greenaway, important figures in International Arbitration, whose aim is to provide the readers with the richness and "multiform" nature of arbitration in England to practitioners, students and teachers all around the world, in an informative, accessible and pragmatic way.

For those who have little or no experience in English legal practice and culture, the first chapters of the book describe the structure and development of the arbitral system in England, introducing the reader to the most important institutions of the English arbitration system such as the London Court of International Arbitration (LCIA) and the Chartered Institute of Arbitrators (CIARB). The book is composed of specific and detailed chapters concerning key aspects of arbitration in England, including commercial, maritime, commodity, engineering, construction and sports arbitrations.

Key areas covered by this book include: appointing and challenging arbitrators; applicable law and the influence of EU law; the role of the court, including anti-suit and anti-arbitration injunctions and interim relief; arbitration procedure and practice in ad hoc and institutional arbitrations; factual and expert evidence, including privilege and electronic document production; challenges to, and appeals from, awards; recognition and enforcement of awards; and multilateral and bilateral investment treaty arbitration.

The book concludes with two additional overview chapters relating to arbitration in Scotland and the Republic of Ireland. These two concluding chapters are of particular interest because, not only do they cover legal frameworks at hand, they consider everything from arbitral proceedings to miscellaneous matters.

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Arbitration – A New Horizon Arbitration Law And Appellate Instance

By Dr. Israel Shimony

On November 5, 2008, with the enactment of the Arbitration Law Amendment (No. 2), 2008, the Knesset (Israel's parliament) completed a revolution in the area of arbitration. Rather uniquely, the amendment allows appeal of

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arbitration proceedings regarding the substantive decision. The bill was introduced pursuant to an initiative by myself, Attorney Israel Shimony, in 2005. My determination to change the law and resolute action at meetings of the Knesset's Law and Justice Committee bore fruit as the amendment became the Law Of the land.

Israel's Arbitration Law, 1968, superseded the 1926 British Mandate Ordinance, a nearly identical duplicate of the English Arbitration Act of 1889. Up until the 2008 amendment, the law was that an erroneous arbitration award, rendered in good faith, could not be overturned by a court of law. The Supreme Court case law expressly established that the court does not serve as an appeal instance. The court was authorized to annul an arbitration award only in extreme circumstances, such as deceit or ultra vires, etc., but not to review legal errors.

The inability to rectify an error of law in a given award has deterred parties from using arbitration. Relevant data shows that many litigants were concerned about submitting disputes to arbitration and that attorneys tend not to recommend the use of such proceedings. Some of the reasons for the reluctance were costs, lack of awareness regarding the nature of arbitration proceedings, a cultural preference for court litigation, a mistrust of any entity other than a court of law in deciding a dispute and the non-finality of the arbitration award. The near impossibility of overturning an arbitration proceeding did not help.

Additions to the Arbitration Law included Section 21(a) – an appellate procedure of an award before another arbitrator; and the law was also amended to require the addition to reasons an arbitration award pursuant to section 24 and section 29(b) – providing for a leave to appeal an award before a court of law. The law, as amended, is designed to serve a basic need in the conduct of legal proceedings: a duty to give legal grounds for the award and a right to appeal, through which a material error in an arbitration award can be rectified.

Section 21(a) **–** Appeal before an Arbitrator

The law created two routes of appeal. The first, is found in section 21(a) of the current Arbitration Law, under the heading "Appeal before an Arbitrator." It allows an appeal before an arbitrator, as opposed to one before a court. This method may preserve the arbitration process, through the appellate instance, as an efficient and expeditious proceeding, since the date for hearing such an appeal (which may be held either before a single arbitrator or a panel to be appointed by the parties as the appeal instance), will occur much sooner, than a corresponding court hearing.

The condition for using the route of appeal before an arbitrator is simple: the parties` stipulation to that effect in the arbitration agreement. In such event, the arbitrator has an unambiguous duty to provide legal grounds for the award. The reason therefor is clear: without reasons, the correctness of the award cannot be established.

For an efficient organization of the legal processes, a Second Schedule was added to the law, which includes the following: A duty to keep a record of what had transpired during arbitration sessions; the composition of the appellate arbitrators' panel; the dates for lodging an appeal; the procedures of lodging an appeal, filing the responses and any counter-appeal; the manner of conducting the proceeding and rendering a decision; and the date for rendering the award in the appeal and issuing the grounds.

It is important to stress that, in terms of the definition of "award" in the law, the award is deemed to be that which is rendered in the appeal, unless no appeal has been lodged against the award rendered in the first instance, or after the lapse of the date for the lodging thereof as provided in section 21.A. (b) of the law.

With a view to preventing an excess of instances of arbitration proceedings, the right to annul an award or that of the appellate arbitrator has been limited to annulment grounds (9) and (10) of section 24 of the Arbitration Law, i.e., public policy and such instances where a court judgment (which is no longer appealable) would have been annulled. In our view, it is essential to continue to allow these grounds in judicial proceedings where the courts could oversee a private, out of court form of litigation.

Section 24 **– Annulment of the Arbitrator's Award and Addition** of a Section Concerning the Duty to Provide Grounds for the Award

The traditional arbitration route, allowing for the annulment of an award pursuant to section 24, for such reasons as public policy, remains unchanged. At the same time, in view of the significance of the provision of reasons for a decision by the arbitrator, it has been prescribed in Amendment No. 2, (section O of the First Schedule), that even if the parties do not agree that the award is appealable, the arbitrator is required to provide grounds, unless the parties have expressly resolved to eliminate such provision in the arbitration agreement.

Section 29(b) -- Leave to Appeal an Award Before a Court of Law

Amendment No. 2, added a second route of appeal, entitled, "Leave to Appeal an Award before Court". This section is designed, inter alia, to allow the judiciary to re-enter proceedings it was initially excluded from. This route allows interested litigants to appeal an award in court. It is subject to several conditions: First, the parties` consent to conduct such appellate proceedings and memorialize it in the arbitration agreement, stipulating that the arbitrator would render his award according to applicable law.

Moreover, their consent, set in writing in the arbitration agreement, that the award is appealable (with leave of court) if a fundamental error has occurred therein in the application of the law, which is likely to result in a miscarriage of justice is required. The appeal will be heard by a single judge. In this route, too, the arbitrator is required to provide reasons for his award. Furthermore, a duty to document the arbitration sessions by means of minutes applies, as provided in section 29(b)(B) of the law. In the event that leave to appeal is granted, the litigants will be able to argue in favor of annulment, based on the grounds therefor provided in section 24.

The Arbitration Law authors a codification standard. The appeal instance, as prescribed in the amendment, will comport with the parties` decision at the outset, or when the arbitration agreement is prepared. They will determine whether the option of appeal is of interest to them and consider the composition of the reviewing body. It will allow litigants to challenge the award in the event of an error and to have their day in court as litigants. It should be emphasized that the

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traditional arbitration route, which does not include an appellate instance remains available and unchanged except for the addition of requiring an arbitrator to provide grounds for his award.

Investment Arbitration and State Sovereignty: A Proper Balance between Private and Public Interests?

A Reference to a Recent Case: *AES Summit Generation Limited and AES-Tisza Erőmú Kft. v. Hungary*

by Christina Gavriilidou

We can see a growing number of concluded bilateral investment treaties and other investment treaties nowadays, including the ICSID Convention and free trade agreements (NAFTA, CAFTA etc.), mainly owing to the recognition of foreign direct investment (FDI)as a crucial element for economic growth globally.

What truly distinguishes these treaties is the fact that they tend to function independently, that is without being subject to political interference of either host or home-governments. However, host-governments' exercise of political or regulatory powers is sometimes instigated by the need to preserve their sovereign immunity to external factors. It must be noted though that this is the ultimate objective of these treaties, and as Wälde said, "*Investment treaties as international law disciplines interfere in domestic regulatory and administrative sovereignty; that is their very purpose"(*Wälde T. W. Investment Arbitration under the Energy Charter Treaty: An Overview of Selected Key Issues Based on Recent Litigation Experience" in Nobert Horn and Stefan Kröll, *Arbitrating Foreign Investment Disputes,* 2004*).*

The constant exercise of a state's regulatory powers undoubtedly stems from the emergence of a particular form that - the previously administrative state - has taken: the form of the *regulatory state* (Santiago Montt, *State Liability in Investment Treaty Arbitration*, 2012). Nowadays, in societies where the element of risk is diminished, regulations gain a determinative role and confirm the regulatory character of the state which possesses the constitutional power to determine and redefine the ubiquitous conflict between private interests and public interest. As a matter of fact, nothing is more incompatible with a state's ultimate goals towards economic development than a continuous persistence to the status quo.

State liability thus, is provoked by a state's regulatory power to damnify one's legitimate interests in the pursuit of collective goals. This is usually the case in investment arbitration, where the investor claims that his rights have been violated and suffers economic damages caused mainly by expropriation, unstable legal environment in the host-state or frustration of his legitimate expectations.

State liability can be construed as emanating from corrective justice rationales, meaning liability imposed in cases where a wrongful action on behalf of the host-state has taken place and the adjudicator must review the disputed legitimacy of the state action or inaction. The distributive justice rationale of state liability determines the compensation to which citizens and investors are entitled to receive in cases where the state harms their rights in a disproportionate way (Santiago Montt, *State Liability in Investment Treaty Arbitration*, 2012).

State liability in investment arbitration is mostly imposed due to an improper balance between protection of the rights of investors on the one hand, and a wide recognition of a state's legitimate actions or inactions on the other. In a recent ICSID case – *AES Summit Generation Limited and AES-Tisza Erőmú Kft. v. Hungary* – the claimants alleged breach of the Energy Charter Treaty in that the defendant (Hungary) had frustrated the claimants' legitimate expectations by re-enacting a specific regulation and thus, creating unstable legal environment as regards the investment of the claimants.

When it comes to property rights, the regulatory state can impose burdens and restrictions as long as it follows a lawful procedure. Harm by itself, therefore, cannot be deemed a sufficient factor to establish liability; there must be some kind of unlawfulness. And yet, because of the wide discretion that the constitution confers to legislatures, illegality (*stricto sensu*) is rarely to be found.

In *AES Summit Generation Limited and AES-Tisza Erőmú Kft. v. Hungary,* Hungary's public policy concerns and the respective re-enacted legislation centred on consumers' protection, was deemed to be one of the primary issues for a state to regulate. Hungary's actions, therefore, were assumed to be legitimate, even though AES' rights were harmed.

A state's actions (or inactions) that harm citizens or investors are only then justified when they serve a reasonable and rational public policy objective. That means that, at a starting point, there must be a legitimate public interest instigating the respective actions of the state which affect the investors. Second, issues of suitability and necessity come to the front; that is, whether the measure is appropriate for achieving the public interest at issue, and whether the measure is the least restrictive for the investor's rights or there are alternative means less restrictive.

According to the ECJ: "*when there is a choice between several appropriate measures recourse must be had to the least onerous*" (Case 331/88 R v MAFF, ex p Fedesa, 1990). As far as these issues are concerned, the Tribunal didn't go much further in analysing the suitability and necessity of the measure; in my opinion, there was an implicit acceptance of the existence of these two criteria.

In addition, the ECJ has stressed the importance of the proportionality principle as one of the general principles of Community law and it observed that "the disadvantages caused by the measure must not be disproportionate to the aims pursued" (Case C-331/*88 R v Ministry of Agriculture, Fisheries and Food* in Santiago Montt, *State Liability in Investment Treaty Arbitration*, 2012). The proportionality principle lies in the concept of a proper balance that has to be achieved with respect to the demands of the general interests of the public on one hand, and the need for protection of the individual's fundamental rights on the other.

In *AES Summit Generation Limited and AES-Tisza Erőmú Kft. v. Hungary,* the Tribunal found that

Hungary, in re-enacting the price regulation didn't act in an arbitrary manner, as the legislation was based on objective and reasonable criteria, and that "the effect on AES was the logical result of a uniform methodology that was applied equally to all generators", thus eliminating any disproportionality issues. As to AES' allegation that Hungary frustrated its legitimate expectations, it must be noted that the underlying rationale of legitimate expectations is the protection of an individual's interests which are competing public interests and the possible compensation of such interests in case that they are sacrificed in the pursuit of public goals.

Shonberg has stressed the importance of flexibility in a state's policies, noting that "(policies) cannot reasonably be expected to remain fixed forever" as they "do not bear the mark of finality" like it happens with decisions in general. That was the Tribunal's stance as to the case at issue; AES could not have reasonably expected that no change in the respective legislation would come up.

The difficulties encountered in any effort to define the public interest involved in a case could simply lead to the concept that whenever property is fully or substantially destroyed, there must be a compensation to which the investors are entitled (Thomas Walde and Abba Kolo, *Investor-State Disputes: The Interface Between Treaty-Based International Investment Protection and Fiscal Sovereignty*, 2007). This is in line with the nature and the objective of investment treaties, which provide the investors with a certain degree of protection against a State's regulatory powers.

Some tribunals have also concluded that despite the fact that deprivation of property may be partial, it can still amount to expropriation and thus entitle an investor to a proper compensation, in contrast with other tribunals which seemed to be in favour of the economic approach; that is, a substantial deprivation of the investment (Santiago Montt, *State Liability in Investment Treaty Arbitration*, 2012).

The Saluka case addresses similar issues with the above-mentioned case in stating: "It is now established in international law that States are not liable to pay compensation to a foreign investor when, in the normal exercise of their regulatory powers, they adopt in an non-discriminatory manner bona fide regulations that are aimed at the general welfare". This point of view reflects the opinion of the Tribunal in *AES Summit Generation Limited and AES-Tisza Erőmú Kft. v. Hungary* which stressed the significance of non-discrimination and the prevailing circumstances of public interest.

To conclude, there is a major conflict between an investor's private interests and public interests. The views of the tribunals are quite discordant upon this matter. In my opinion, there is a complex situation of balancing. However, where the value of an investment has been wholly or significantly decreased due to *bona fide* regulations serving the public good, the investors are not expected to carry such a high individual burden without a proper compensation on behalf of the host-state.

Can Investor Claim Lost Profits for Breach of Pre-contractual Relations? Recent award in *Luigiterzo Bosca v Lithuania* Suggests that it is very Unlikely

By Vilija Vaitkutė Pavan and
Rapolas Kasparavičius

An abundant number of agreements have been and will be concluded between the states and the investors operating under the bilateral investment regime and even a larger number of negotiations will fail before reaching the final stage of signature. An investor may spend large sums of money with the view to concluding an agreement with the state. This may be only wasted costs if the final agreement is not signed. Is the bilateral investment regime able to assist the investors where investors spend large sums of money and negotiations are terminated by the state? Would the investor be only able to recover its wasted costs or the state could also be liable for investor's lost profits?

A recent award of the arbitral tribunal composed of Daniel Price, prof. Brigitte Stern and and the presiding arbitrator Hon. Marc Lalonde in the investment arbitration case *Luigiterzo Bosca v the Republic of Lithuania* revisited the issue of protection of pre-contractual rights under the investment treaties. Though the arbitral tribunal found jurisdiction over the dispute arising out of pre-contractual relations between the investor and the state, it entirely dismissed the investor's claim for damages calculated as lost profits. The award revisited the issues of pre-contractual rights and the definition of investment under the BITs. It also addressed the extent of state's liability in cases of breaches of BITs in cases of pre-contractual relations between an investor and a state.

The recent award of the arbitral tribunal in *Luigiterzo Bosca v the Republic of Lithuania* in conjunction with the earlier case law may render some useful guidance as to when an investor may prevail with its pre-contractual claim and what recovery an investor may expect from such claim.

Earlier case law and *Luigiterzo Bosca v Lithuania* award

Earlier case law

The awards preceding the arbitral tribunal's decision in *Luigiterzo Bosca v the Republic of Lithuania* have predominantly rejected the investors' claims arising out of pre-contractual relations. The arbitral tribunals invariably concluded that pre-contractual expenditures or pre-contractual rights was not an investment under the applicable BIT. Therefore, the claims were dismissed because of the lack of the tribunals' jurisdiction over the dispute not arising out of an investment. However, a brief overview of the tribunals' reasoning below does not suggest a firm rejection of pre-contractual claims under the bilateral investment regime.

Probably the first and the most-cited decision of the arbitral tribunal on the issue of protection of pre-contractual rights under investment treaty regime is *Mihaly v Sri Lanka*. In *Mihaly*

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the American investor claimed from the state its wasted costs resulting from the state's decision to withdraw from the negotiations which were based on a letter of intent establishing a general framework for the negotiations. The arbitral tribunal found that it had no jurisdiction over the dispute, since the pre-contractual expenditures did not constitute an "investment".

Hence, the dispute did not arise out of an investment as required under Article 25 of the ICSID Convention. It was emphasized that the negotiations never matured into a legally binding contract. However, the tribunal left the doors open for investment claims outside the ICSID Convention. The tribunal made two observations in this respect: the first, by stating that "*in other circumstances, similar expenditure may perhaps be described as an investment*"; and, the second, by concluding that that the investor's remedy may not arise because an investment had been made, "*but rather because the requirements of proper conduct in relation to negotiation for an investment may have been breached.*" Arguably, the tribunal's findings meant the following:

Pre-contractual expenditures may constitute an investment in the circumstances where the tribunal is not restricted by the definition of investment under Article 25 of the ICSID Convention, i.e. when the investor's claim is heard in the arbitral institutions, such as ICC, SCC, LCIA, etc. or in *ad hoc* arbitration under the UNCITRAL arbitration rules. In such circumstances the only restrictions on the tribunal's jurisdiction with respect to the definition of "investment" may be set in the bilateral investment treaty which may include the definition of investment as broadly as to include the pre-contractual expenditures or pre-contractual rights;

The investor may claim the pre-investment expenditures from the state in cases where the BIT protects the investors at the stage of admission or establishment of investments (e.g. USA, Canadian, and Japanese BITs), i.e. before investment is established in the host state.

The investor's claim arising out of pre-contractual relations was also rejected by the ICSID tribunal in *Zhinvali v Georgia*. As opposed to *Mihaly*, in this case the tribunal's analysis shifted from the definition of "investment" under the ICSID Convention to Georgian Law on Investment which also provided for the state's consent to arbitration under the ICSID Convention. Though the investor and the state had signed several agreements on the exclusivity period of negotiations, the tribunal found that pre-contractual expenditures were not an "investment" under the Georgian law.

The next case which was perhaps the closest to what the *Mihaly* tribunal described as "*other circumstances*" when the investor's pre-contractual expenditures may be claimed from the state was *Nagel v Czech Republic*. UK national William Nagel had a cooperation agreement with the state's agency with the view to receive an operational license in the Czech Republic. After the state refused to award the license, the investor filed a claim with the Arbitration Court of the SCC. Claimant argued that his rights arising out of cooperation agreement was an investment under the UK-Czech Republic BIT in the form of "*claims to money or to any performance under contract having financial value*".

Though the arbitral tribunal's jurisdiction was not restricted by the definition of investment under Article 25 of the ICSID Convention, it nevertheless concluded that the investor made no investment in the host state. The tribunal explained that an "investment" is an "asset" which has a financial value. It concluded that the investor's rights did not have financial value because it did not create legitimate expectations to the investor. The legitimate expectations did not exist because the parties were only obliged to work together without any guarantee that the licence would be obtained.

F-W Oil Interests v Trinidad & Tobago was again an ICSID case in which the investor was a winner of the public tender, negotiated with the state's agency over the agreement for exploitation and extraction of oil in the offshore of Trinidad & Tobago, but the state has ultimately decided to withdraw from the negotiations with the investor. The arbitral tribunal's jurisdiction was subject to the rules of the ICSID Convention, however, it started its analysis from the definition of "investment" under the USA-Trinidad & Tobago BIT.

As a starting point, the arbitral tribunal stated that "*the investor must show the existence of some form of legally enforceable right, or its equivalent*". It further added that only „*proprietary or contractual rights*" may fall under the definition of investment under the BIT. The arbitral tribunal concluded that it lacked jurisdiction over the case because the investor made no investment in the host state. Firstly, the tribunal recognized that it was illogical to claim the investor's locally enforceable right to recover wasted costs was an investment. An investment must predate the breach of it; hence, failure to conclude the agreement cannot be investment and the breach of it at the same time. Secondly, the tribunal found that both parties insisted that they would not be legally bound before the execution of a formal contract.

Luigiterzo Bosca v Lithuania award

The stage of pre-contractual relations between the investor and the state, however, was not a bar to the arbitral tribunal's jurisdiction in *Luigiterzo Bosca v the Republic of Lithuania*. Even though the arbitral tribunal made a one step further as opposed to earlier decisions rejecting the claims on the grounds of lack of investment in the host state, the *Bosca* award shows that in similar circumstances the investor may not expect more than the recovery of wasted costs.

"Bosca" branded production of sparkling wines is probably the second most known brand of sparkling wines in Lithuania after the national brand "Alita". State-owned producer of sparkling wines "Alita" was privatized in 2003 and Italian national Luigiterzo Bosca was among 4 bidders who participated in the public tender for acquisition of Alita. Mr Bosca's bid was the highest and he was declared the winner of the public tender. Mr Bosca and the privatization agency of Lithuania entered into negotiations over the share purchase agreement.

The negotiations went smoothly and only several issues were left to be agreed between the parties. However, the privatization agency held to its guns and was not willing to reduce the requested size of contractual fines. The privatization agency declared "take it or leave it" and set the deadline for agreement on the final version of the text. After Mr Bosca failed to arrive within the set time frame, it withdrew from the negotiations with the Italian sparkling wine producer.

Luigiterzo Bosca sued the privatization agency for its failure to observe the tender regulations, the Lithuanian Civil Code provisions prescribing the duty to act in good faith in pre-contractual relations and requested the state to compensate his out-of-pocket expenses incurred in the process of negotiations with the state. The case went through all the three instances and the Supreme Court of Lithuania recognized that Mr Bosca was mistreated in the tender process and awarded him the direct damages. The judgment of the court was executed and Mr Bosca was compensated his direct damages.

The Italian national felt that the justice was still not there – Mr. Bosca initiated the *ad hoc* arbitration proceedings under the UNICTRAL rules of arbitration and submitted a claim against the state under Italy-Lithuania BIT. Mr Bosca alleged the state's failure to accord just and fair treatment, national treatment, most-favoured-nation treatment and guarantees of legal expropriation. The investor claimed that "but for" the state's conduct Mr Bosca would have earned around EUR 207 million from operating Alita.

The state requested to dismiss Mr Bosca's claim on various grounds including the absence of investment in the state, failure to prove the breaches of the state's international obligations and the fact that the Italian national was already compensated by the local courts.

The arbitral tribunal concluded that it had jurisdiction over the dispute because Mr Bosca's involvement in the alcohol market of Lithuania by way of providing services to the company producing "Bosca" production constituted "know-how" under Article 1(1)(d) of the Italy-Lithuania BIT. In additional, the arbitral tribunal recognized that Mr. Bosca's participation in Alita tender was, something not often seen in other BITs, an "associated activity" in the form "making of contract" under the Protocol of the BIT.

The Protocol to Italy-Lithuania BIT extends the treaty protection to various activities associated to investment, e.g. "the dissemination of commercial information", "the acquisition of property" and, as referred to by the tribunal, "the making of contract". The coverage of treaty protection not only to investment, but also to activities associated to investment is an unusual, but not unseen, construction of bilateral investment treaties. Arguably, the Italy-Lithuania BIT was influenced by the same generation of USA BITs which also grant treaty protection to "associated activities" similar to the ones listed in the Italy-Lithuania BIT.

Having concluded that Mr. Bosca's participation in Alita tender constituted the "making of contract" under the BIT, the arbitral tribunal noted that the issue was not about the state's interference with Mr. Bosca's investment – the service agreement which could not have been effected by the state's decision to withdraw from the negotiations – but with the associated activity in the form of "making of contract".

On the merits the arbitral tribunal found the state liable for its failure to accord just and fair treatment to Mr. Bosca's "making of contract" in Lithuania. The arbitral tribunal decided not to examine any further alleged breaches of the treaty by noting that in any event any other breaches would not lead to awarding any additional damages to Mr. Bosca.

On the quantum phase of the case the arbitral tribunal totally rejected Mr. Bosca's claim for EUR 207 million in damages. The grounds for dismissing the claim on damages were primarily facts-specific, *e.g.* the tribunal stated that it was not clear if the parties would have eventually agreed on all issues before concluding the contract. However, the tribunal's reasoning shows its inclination to accept the principal position that in pre-contractual relations the putative investor should not expect more than recovery of out-of-pocket expenses. The arbitral tribunal stressed that the parties were still in pre-contractual relations and, relying on arbitral and doctrinal support, concluded that damages based on assumption of concluded contract were too remote and speculative. As a result, Mr. Bosca was only entitled to the recovery of direct damages. Since the direct damages were already compensated to Mr. Bosca, the claimant's entire request for damages was entirely dismissed.

Luigiterzo Bosca v the Republic of Lithuania may be one of rare awards where investor's treaty claim arising out of pre-contractual relations managed to overcome the jurisdictional hurdle of "investment". This was determined by two factors: *the first*, the investor's prior involvement in the state which was an "investment" and a platform for further expansion by way of negotiations over the transaction; and, *the second*, favourable treaty provisions not only granting protection to investment, but also extending the scope of protection to "associated activities" such as "making of contract".

However, *Luigiterzo Bosca v the Republic of Lithuania* award suggests that the arbitral tribunals may be reluctant to award more than direct damages either in all cases where the parties are still in pre-contractual relations or the threshold may be very high, i.e. the conclusion of a contract must be a certainty in order to award the lost profits to the investor.

Conclusion

The arbitral tribunals before *Luigiterzo Bosca v the Republic of Lithuania* invariably dismissed the investors' claims arising out of pre-contractual relations. Generally, the mere pre-contractual relations is insufficient to prove the existence of investment under the BIT. However, there may be some consensus as to how the investor should act and what the investor must show in order to prevail with its claim:

The investor should pursue its claim in forums not restricted by the definition of investment under Article 25 of the ICSID Convention;

The investor's claim should be based on a broad-based definition of investment under the bilateral investment treaty encompassing any assets, such as "any rights or claims to money" or "any rights conferred by law or contract";

Ideally, the investors claim arising out of pre-contractual relations should be based on existing investment which was sought to be expanded via the anticipated agreement with the state. The putative bilateral investment treaty should expand treaty protection to "associated activities" to investment, such as "making of contract" or "acquisition of property";

The mere claim to money arising out breach of general duty of good faith prescribed by national law without a self-standing investment in the host state may not be sufficient – the claim to money cannot be an investment and the breach of it at the same time;

the best-effort obligations established in the letters of intent, highlight that a cooperation agreement may not be enough to constitute legitimate expectations and, thus, a right having a financial value (an asset), and, in turn, an investment protected by the bilateral investment treaty;

However, even if the investor persuades the arbitral tribunal that during the pre-contractual negotiations the investor possessed investment and this investment was not treated in accordance with the treaty provisions, the investor may only recover direct damages unless the investor proves that but for the state's conduct, the contract would have been concluded for certain.

Spain: Arbitration for Preferred Shares

By Rafael Berdaguer Hijano

The Problem

In 2008, Spanish banks and savings banks already had clear reports stating that current high interest rates were going to drop and the housing bubble was about to pop.

Savings banks, in order to avoid losses and due to their impossibility to issue shares, brought to stage a new kind of financial product, called "Participaciones Preferentes" (Preferred shares). The idea behind this: that they would lead to high returns depending on their profits, have no voting rights and be perpetual in nature. Savings banks offered up to 7% returns to the clients in order to invest their savings. Many clients were not informed about the disadvantages of this financial product, thereby unaware of the fact that they were just holding unsecured debt instruments.

The two main problems concerning preferred shares are:
1. The dependence of returns to the financial entity profits. Further on, as a result of the housing bubble pop, there was no profit for the savings banks, so there were no returns.
2. The "Fondo de Garantía de Depósitos" (Deposit Guarantee Fund) does not insure preferred shares, as it does with deposits, covering up to 100.000 E in the case of non-return of the deposited financial instruments.

Affected people

Most of the affected people who purchased these preferred shares were retail clients of these financial entities, without any financial culture, who did not know any of the risks relating to what they were doing. Most of them just received a call from their banks, convincing them to change their deposits into this new kind of bond that would give them up to 7% returns. The disadvantages were not explained to them and many of them were told to ignore the pages of forms they were signing because the contents were simply formalities.

In most cases, the investment represented their whole life savings.

Possible Solutions

Holders of the preferred shares have four different options: Secondary market, Conversion into common shares, Going to court to claim for the invalidity of the contract, or going to arbitration.

Regarding the first solution, preferred shares may be sold at a loss considering current circumstances in secondary markets. The conversion into common shares is the solution that for example Bankia tried, not being successful as the share value dramatically dropped a 55% (1,35 to 0,6) after the exchange, and, including the compulsory deduction ordered by both the EU and the Spanish Government, the losses raised up to 77% in some cases. Going to Court is costly and time consuming.

Arbitration may be the solution for those affected people who want to get back their savings without the need of incurring greater expenses. A government-supervised process to address complaints through arbitration has been established.

Arbitration Proceeding and its characteristics

This kind of arbitration may defer from traditional arbitration. It is voluntary, free, fast and binding for the parties. It doesn't require any legal representation, although it is advisable.

The proceeding is as follows: all applications submitted by customers through the entities branches will be forwarded to an independent expert (in the case of Bankia, KPMG), who will prepare a report that will evaluate the amount to be returned to the affected customer, if applicable, and the decision will be communicated to the parties.

If the affected customer decides to continue with the process, he or she will sign an "Arbitration Agreement", agreeing to accept the arbitration award and waiving the right to pursue the matter in the courts.

Once the agreement is signed, the case is referred to the "Junta Arbitral Nacional de Consumo" (National consumer Arbitration Board).

The case finishes when the parties have been informed of the award, which cannot be appealed if it's not favorable. If it is, the consumer will receive the amount of money previously stipulated in the agreement.

Arbitration or Court

The main advantages of this kind of arbitration over litigation are that it is a rights-based system, of obliged compliance, binding (it has the effect of res judicata), free (there is no need to have legal representation), fast (has a deadline of six months and the decision cannot be appealed), simple, more accessible (the request can be done at the bank's branches) than going to court, and the arbitrator is an expert in the field of Consumption.

On the other hand, litigation has more resources to achieve the return of investments, and can provide extra compensation for the suffered damage.

Moreover, it is clear that nationalized banks such as Bankia may not be able to assume the cost of that amount of court cases, without further financing coming from the European Stability Mechanism (ESM). In this matter, as of the 31st of August 2013, there were 182.001 applications for arbitrations by affected consumers.

To my mind the Government is trying to limit the losses to the nationalized banks promoting the resolution of disputes according to an arbitration procedure. The resolution of disputes by alternative means, such as arbitration, theoretically is a reasonable course of action.

General Arbitration has many advantages over litigation because it is generally based on the neutrality of the arbitrators, which are normally chosen by agreement between the parties. This is not true in the case of arbitration before the Insituto Nacional de Consumo (National Consumers Institute). This is a public organism, funded by state funds.

The cost of the arbitration must be paid, at the end of the day, with tax payer's money (the European Stability Mechanism (*ESM*) is *only* allowed to offer financial stability *loans* that must be repaid by the FROB (Fondo de Reestructuración Ordenada Bancaria/ Fund for Orderly Bank Restructuring), guaranteed by the Kingdom of Spain.

This brings into question the arbitrators neutrality which ought to be essential. The effort of the Spanish Government is to foster the use of arbitration to settle the disputes brought by preferred shareholders in order to control the process and limit the losses to public finances. All this using fooled retail consumers who only wanted to maximize the value of their entire life's savings.

Incidents like the Bankia disaster, in which the trust of the consumers is so shamelessly violated by banks and even government, will only stop when the majority realizes they had better take care for themselves, because no one else will.

In Conclusion, although litigation may imply a longer procedure to retrieve the investment, the result is much more advantageous if your investment represents a significant sum of money (>10.000 Euros).

AIA Recommends to Attend

BDC: Brussels Distribution Conference

The Brussels Distribution Conference is an event organised and managed by the DBB law firm (46 Avenue des Arts, 1000 Bruxelles - www.dbblaw.eu) in collaboration with LAWROPE® EEIG (www.lawrope.com) under the direction of Pierre Demolin (Avocat aux barreaux de Mons et de Paris) and of Benoit Simpelaere (Avocat au barreau de Bruxelles).

The BDC 's aim is to take stock of the legal and economic aspects of commercial distribution, from both national and international perspectives, and provide a platform for the various stakeholders in the distribution field.

The organisers intend to hold this conference bi-annually in Brussels. A book including the speakers' presentations will be published by Editions LARCIER, a well known legal publisher, and given to each participant. (Additional copies will be available for purchase from the publisher.)

FIVE REASONS TO PARTICIPATE

1. Expert Contributions : BDC has assembled a panel of leading practitioners, experts in the field, from different countries including insights from the European Commission and WIPO;
2. Multi-disciplinary approach : BDC examines Commercial Distribution from both Legal and Economic Perspectives;
3. Keynote Speakers: Madame Minister Sabine LARUELLE will be present on Thursday, October 3rd to talk, among other things, about the status of the draft amendment to the Law of 19 December 2005 on pre-contractual information in the context commercial business agreements. On Friday, October 4th, Guy GRAS, legal director of the Yves Rocher Group and former President of the European Franchise Federation, will discuss the future of internet sales within distribution networks.
4. Outstanding social programme : in addition to the Friday evening cocktail and closing dinner on Saturday evening, the social programme options include: an Art Déco tour, or a visit to the Magritte museum on Saturday, October 5th, 2013; and chocolate tasting with the well known 'chocolatier', Frederic Blondeel, on Sunday morning, Oct 6th, 2013.
5. Value for money : the inclusive conference package is available at an affordable price (€495).

For further information and registration details, including details of the Social Programme, please visit the BDC website: http://www.brusselsdistributionconference.eu

Seminar with Robert Cialdini on the Science of Influence hosted by Concilia

Dr. Robert Cialdini has spent his entire career researching the science of influence earning him an international reputation as an expert in the fields of persuasion, compliance, and negotiation. His books including, Influence: Science & Practice, are the result of decades of peerreviewed research on why people comply with requests.

The seminar will take place in Milan on November 22, 2013 and the participants will have the opportunity to learn how to:
- Quickly create (and maintain) a relationship of trust and cooperation with customers, employees, business partners
- Strengthen immediately the perception that the other has of our reliability, authority and seriousness
- Avoid 'traps' typical of persuasion manipulative
-Achieve lasting results by implementing small changes in attitude and strategies
-Do all this by reconciling ethics and productivity

For further information and registration details, including details of the Programme, please contact: concilia@concilia.it

ICC Conference on the The 2012 ICC Rules of Arbitration and the 2007 Moroccan Law on Arbitration : 2 Reforms, 2 Analyses

On the 27th of September 2013, the ICC International Court of Arbitration will co-organize a conference with Altana Law Firm on "The 2012 ICC Rules of Arbitration and the 2007 Moroccan Law on Arbitration : 2 Reforms, 2 Analyses". The conference will take place in Casablanca, Morocco.

For more details follow the link below:

http://www.iccwbo.org/Training-and-Events/All-events/Events/2013/The-2012-ICC-Rules-of-Arbitration-and-the-2007-Moroccan-Law-on-Arbitration---2-Reforms,-2-Analyses/

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