Association for International Arbitration
In Touch

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arbitration-adr.org

CONTACT US:
146, Avenue Louise
B-1050 Brussels
Belgium
Fax: +32 2 646 24 31
Tel: +32 2 643 33 01
Email: administration@arbitration-adr.org

AIA Upcoming Events:

Seminar on Collective Redress through ADR:

LOCATION: Institute for European Studies (BICCS) Rome Room, Pleinlaan 5,1050 Brussels, Belgium

DATE: 12th of March 2014 from 2pm-5pm followed by a Networking cocktail

click here to register

International Conference "Entrusting Antitrust Issues to Arbitration":

LOCATION: Brussels, Belgium.

DATE: 19th of May 2014 from 12:00 pm-20.30 pm

The conference will be a unique event tackling challenging and specialised areas – competition law and arbitration. The major topics include:

- Arbitration in merger control.
- EU competition law before arbitrators and the future of private antitrust enforcement in Europe.
- Court review of arbitral awards dealing with EU Competition Law issues.

Many of the leading experts in the field of antitrust arbitration will be present. Confirmed panellists and moderators are Ms. Janice Feigher (Castaldi Mourre & Partners), Mr. Bart Volders (Stibbe), Mr. Assimakis Komninos (White & Case), Mr. Gordon Blanke (Baker & McKenzie), Mr. Marc Blessing (Bär & Karrer), Ms. Iuliana Iancu (Hanotiau & van den Bergthey), Mr. Christoph Liebscher (Wolf Theiss), Mr. Luca Radicati di Brozolo (Catholic University of Milan), Mr. Renato Nazzini (King's College London).

Click here for details and registration

EMTPJ 2014 Session Now Open For Registrations 25% early bird discount!

On the 18th-30th of August 2014, the European Mediation Training for Practitioners of Justice (EMTPJ) session will run for its 5th consecutive year. The EMTPJ is an 11 day intensive training course on cross border mediation in civil and commercial matters. The training is unique because it is tailored to cover both theoretical and practical elements of mediation with a European perspective.

Subjects include: Analysis of conflict theory and mediation, analytical study of conflict mediation methods, theory and practice of EU contract law in Europe, EU ethics in mediation, interventions in specific situations, theory and practice of EU Law and Mediation Acts, the function of party experts and counsel in civil and commercial mediation and international mediation.

What opportunities does the EMTPJ offer:

1. It is open to professionals from various different fields whether they have a background in mediation or not.
2. It is recognised by just under 20 mediation centers in and beyond Europe.
3. It offers a truly international learning environment with students and teachers travelling from all over the world to participate.
4. It is based in Brussels, the heart of Europe.
5. It is flexible, for those who are interested in part of the program but not everything, we offer EMTPJ continuous hours which allows participants to pick and choose subjects.
6. It provides a solid basis for students to build their own mediation practice.

If you would like to receive more information and register for this year session, follow the link http://www.emtpj.eu/2014/default.htm.

*Experienced Mediators who can demonstrate 200 hours mediation experience and 20 cases may apply to take the AIA's Qualifying Assessment Program (QAP) approved by the International Mediation Institute (IMI). Visit the link for details.

An Overview of: 'Rebooting the Mediation Directive; Assessing The Limited Impact of Its Implementation And Proposing Measures To Increase The Number of Mediations in the EU.'

by Olivia Staines

This year, the European Parliament published a study entitled 'Rebooting the Mediation Directive: Assessing The Limited Impact of Its Implementation And Proposing Measures To Increase The Number of Mediations in the EU' (Available on *the AIA website*). The study is very important not just because it is new and provides insight into the current status of mediation in the EU, but because it brings almost all possible legislative incentives and sanctions as well as non- legislative measures together.

First and foremost, the study highlights the fact that the EU Mediation Paradox remains unsolved. Mediation is still used in less than 1% of cases despite its obvious advantages, purportedly due to weak pro-mediation policies (legislative and promotional). Specifically, in Christian-Radu Chereji and Constantin-Adi Gavrilă's article: 'What Went Wrong With Mediation' published on Kluwer Mediation Blog, four key reasons are cited as to why mediation remains unpopular. Notably, 1. Implementation policies; 2. mediation marketing; 3. mediators' behavior and practice and 4. mediation regulations.

Fundamentally, a thorough comparative analysis of the legal frameworks of the 28 Member States, combined with an assessment of the current effects of the Mediation Directive in terms of its produced results throughout the EU, shows that only a certain degree of compulsion to mediate (currently allowed but not required by the EU law) can generate a significant number of mediation's. The top three most popular Legislative Measures put forward are to:

1) Make mediation mandatory in certain categories of cases
2) Require mandatory mediation information sessions before litigation
3) Provide incentives for parties who choose to mediate

Interestingly, Italy features a 'mitigated' mandatory mediation system. In certain categories of cases litigants are only required to sit down with a mediator for a preliminary meeting, at no cost, in lieu of having to go through, and pay for, a full mediation. If any of the parties are not persuaded that the mediation sessions will have a high success rate, they can 'opt-out' from the process during the preliminary meeting and go directly to court without negative consequences. A staggering 200,000 cases were reported per year in 2013 which illustrates the effectiveness of such a system. In addition, among other advantages, this model also reduces the minimum concerns about the litigants' right of access to justice. It is clear that the judiciary as a whole needs to refer, or even order, more cases to mediation.

The experts suggested the need for an aggressive, large,

and uniform publicity campaign to promote mediation. They also suggested that such a campaign will only succeed if it is uniform through all member-states as a funded EU initiative. Many of them expressed their willingness to help with such a campaign, if it were created.This could be beneficial however; alone such a campaign is unlikely to make a substantial difference. Yes, everyone should be made aware of mediation, but once they are made aware, there should be an enticing and accessible menu if they are going to order mediation rather than litigation.

Currently, mediation is being marketed as a way to relieve the workload of the courts thereby giving the parties an option which is less time consuming and less expensive. However, as Christian-Radu Chereji and Constantin-Adi Gavrilă argue, the problem with this is twofold.

Firstly, parties are unlikely to see lessening the workload of the court as a good reason to abstain from choosing litigation. When people really feel entitled to something, costs are not a priority and having more judges could solve the problem of overload and delay. Secondly, if mediation is seen as a cheaper option, than it could be construed as a cheaper alternative to traditional justice, therefore a service designed for those who cannot financially afford litigation or whose cases are of no importance to the courts or society. In Romania, a 50% discount on stamp duty is certainly an interesting incentive. However; 'cheap and cheerful' alone does not by itself make for the best marketing campaign.

Uniformity was also a theme that the experts regularly mentioned. Many of the concerns regarded the enforcement of settlement agreements, especially in cross-border disputes. They suggested that if enforcement were uniform, mediation would become more attractive, in particular, in the international business sector. Uniformity would also limit the likelihood of forum shopping among parties.

One proposal referred to having a uniform European organization or agency to handle cross-border referrals, not only to help promote mediation, but also to manage and harmonize the framework of cross-border cases and settlement agreements.

Even though, on average, the current systems for accreditation as mediators were considered satisfactory, the respondents placed great emphasis on further education. This is certainly something which ought to be developed. More university-level programs, aimed towards more areas of study than just the legal field, are perhaps necessary to accomplish better standards across the field. Adding mediation to the curriculum from a young age and making it present in high schools and universities can only be a step in the right direction. In Romania they already have introductory classes on mediation for children from the ages of 6-12 years old. Uniform accreditation of mediators on an EU level upon fulfillment of such education, should also be promoted.

The EMTPJ (European Mediation Training for Practitioners of Justice) strives to do just this. The course is recognized by 18 mediation centers in and beyond Europe and promotes the concept of a truly 'European Mediator' (More information on www.emtpj.eu).

Based on the foregoing data and analysis, the study concludes that, the impact of Directive 2008/ 52 EC needs to be developed further to be taken seriously. At the legislative level, there are two possible courses of action.

>First, the legislators in the EU should consider requiring mandatory mediation in certain categories of cases with the ability to opt out.
>Second, the EU should affirm the theory of the 'Balanced Relationship Target Number'.

There is enthusiastic support for a series of well-defined non-legislative measures designed to promote mediation that the EU and the Member States should consider supporting right away. These measures should focus on both increasing mediation information and actually leading litigants to experiment with mediation. The five key changes which will make a difference are not mutually exclusive and if combined, could turn things around for mediation in the EU. Notably having: a mitigated mandatory mediation system, strong campaign launched as an EU initiative with a more enticing marketing strategy, a proper place for mediation in education and uniform accreditation of mediators would be beneficial.

Chinese Investors and Arbitration Institutions – The present scenario

by Monika Ziobro

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Arbitration institutions play a fundamental role in China, more so than in other parts of the world. This is because on the basis of articles 16 and 18 of the Chinese Arbitration Law *(The PRC Arbitration Law was promulgated by the Standing Committee of the National People's Congress of the PRC on the 31st of August and came into force on the 1st of September 1995),* failure to appoint an arbitration institution causes the arbitration agreement to be invalid. In other words, it means that *ad hoc* arbitration is not formally recognized under Chinese legislation.

A few years ago Chinese partners often agreed to solve their disputes via international arbitration in a foreign country, for instance in Stockholm. (*M. Klaczynski, Transakcja w Chinach, a gdzie arbitraz? Singapur v. Hong Kong, Polski Prawnik V. Chinski Projekt, Kultura negocjacji, czesc II, 19.08.2012*).

Most of the contracting lawyers persuaded their clients not to agree to an arbitral proceeding in China because of the high costs and language difficulties that they would encounter (the language of the procedure being Chinese). A reasonable solution to solve such a problematic situation would be to consider Hong Kong and Singapore.

Unfortunately, despite the economic independence and separate legal systems in the aforementioned countries, many foreign investors come to the conclusion that there is too much of a strong connection between China and Hong Kong and that there is in fact no substantial difference between arbitral proceedings and the way they are conducted in Mainland China or Hong Kong.

Conversely, it is inevitable that Chinese companies will decide for arbitration in Hong Kong rather than Singapore because of cultural convergence and territorial closeness. Besides that, there is a strong belief in China that institutional arbitration, whenever and wherever it takes place, ensures that the proceeding is administered in a regular and orderly

manner and this is one of the reasons why arbitration institutions in China play such a big role.

1. CIETAC and BAC

There are more than 200 different arbitration institutions in China – in China these are referred to as arbitration commissions. One of the most significant players on an international scale is the China International Economic and Trade Arbitration Commission (*CIETAC was established in April 1956. Since 2000 it is also known as the Arbitration Court of the China Chamber of International Commerce - CCOIC*). It is in fact the oldest institution with a head office located in Beijing and a sound reputation before the events of 2012. It impartially and independently resolves economic and trade disputes in arbitration.

CIETAC also has numerous Sub-commissions in Shanghai, Shenzhen, Tianjin and Chongqing. Together with CIETAC's popularity, profits of every single Sub-commission have grown. As a result, smaller offices started to compete with each other to obtain potential clients. Slowly and over time – this situation started to create problems and the next step was the announcement on the 1st of May 2012 that CIETAC was to publish new arbitration rules.

Essentially, those new rules strengthened the supremacy of CIETAC and internationalized their central office situated in Beijing. As a response to the new CIETAC rules, the Sub-commission in Shanghai prepared its own regulation without any form of consultation beforehand. Furthermore, they also created their own list of arbitrators – fully independent from CIETAC's list.

Because of this open conflict, Sub-commissions in Shanghai and Shenzhen started to act independently under a new brand – SCIETAC (South China International Economic and Trade Arbitration Commission) and SCIA - Shenzhen Court of International Arbitration (*J. Profaizer, A. Martin, D. Livdahl, Breakdown between CIETAC Central Authority and Sub-Commissions Prompts Another Look at Dispute Resolution Strategies in China, China Matters: Investing & Operating in the People's Republic of China, 2013. Article available on the website of: www. paulhastings.com*). These circumstances have been referred to as a "civil war" which resulted in damaging CIETAC's reputation as one of the best arbitration centres in the world.

The situation still remains unresolved as it does create disorder and confusion in the sense that every company which has an existing contract with an arbitration clause in China, should take into account which institution they choose. Unfortunately, whichever institution the party ends up choosing will create a challenge. On the one hand, if parties submit a case to one of the Sub-commissions, they run the risk that the arbitral award will possibly be denied enforcement and recognition on the basis that it lacks jurisdiction over the case. On the other hand, when the parties previously agreed to arbitration before the Sub-commission they could not have foreseen the current stalemate. It is ambiguous whether the arbitration agreement should be interpreted as specifying CIETAC or the Sub-commission.

Accordingly, parties face the difficult decision whether to proactively amend their arbitration clause to provide for arbitration in either the central authority – CIETAC or another institution. At municipal level, the strongest competitor to CIETAC is the Beijing Arbitration Commission (BAC), which was established in 1995 and who's Rules seeks to reflect the trend of modern international arbitration practice.

BAC plays a very active role in international competition and follows the changing developments of the world arbitration market. The BAC offers dispute resolution services with professionalism and independence on an international level. By the end of 2012, the amount of total disputes was approximately 200 million (*Data from the website of: www.bjac.org.cn available on 22.01.2014*). Today BAC is recognized as an institution which solves domestic, international business and trade disputes through arbitration and mediation as well as via other forms of ADR. In recent years, the number of cases brought to BAC has increased considerably (*For more details see the following website: www. chinagoabroad.com*) and that is why it is one of the most preferable and frequently chosen arbitration institutions in China.

2. HKIAC

Nowadays, Hong Kong has been ranked as one of the world's freest and competitive economies. In 1997 when Hong Kong returned under Chinese sovereignty, in the eyes of the New York Convention, Hong Kong was no longer a separate jurisdiction. To solve that situation, Mainland China and Hong Kong SAR signed a memorandum of understanding (MOU; *more information on www.doj.gov.hk website)* known as the Arrangement concerning Mutual Enforcement of Arbitration Awards.

Today Hong Kong is a city which combines its cultural and geographical proximity to China whilst maintaining legal independence from it. The Hong Kong International Arbitration Centre (HKIAC) was established in 1985 as a non- profit company limited by guarantee. The basis for HKIAC is the Arbitration Ordinance of the 1st of June 2011 (*For the full text see the following website: www.legislation.gov.hk*) with the Amendment Bill to that Ordinance from 2013 which introduces the enforcement of arbitration awards made in Macao (Special Administrative Region of China) and the enforcement of emergency relief granted by an emergency arbitrator (*See: Hong Kong Legislative Committee Paper No. CB(2)2546/08-09(05), Arbitration Practices adopted by Hong Kong's major competitors, available online at: www.legco.gov.hk*). The enforcement of the Arbitration Ordinance cemented Hong Kong's position as one of the leading arbitration centers in Asia and as a regional center for dispute resolution.

The New Ordinance became more-friendly for participants because it introduces the possibility to submit not only a written version of the arbitration agreement but also foresees the use of electronic communication (for example electronic mail or telegram). It is worth pointing out that Hong Kong's Arbitration Ordinance was the first Asian jurisdiction which contains an explicit provision of confidentiality in arbitration proceedings and awards. It can be said that presently, the 2011 Arbitration Ordinance helps to portray Hong Kong to both domestic and international business communities as an attractive place to conduct arbitrations.

Popularity of HKIAC continues to grow which is proved by the statistics in an over-growing number of cases. In 2012 HKIAC handled 456 dispute resolution matters. It was one of the reasons why they, one of the busiest Asian institutions, expanded their offices to meet the increasing demand for neutral and suitable hearings. On that point an institution located in Hong Kong mirrored those ones situated in China and became a valuable forum for solving the disputes between international and Chinese parties.

3. SIAC

Singapore has a very attractive geographical location for foreign investors because it is situated in the center of Southeast Asia. Moreover, this city has a very strong economy and open business environment. As a result of it being party to the New York Convention, Singapore Arbitration Awards are enforceable in more than 140 countries.

The Singapore International Arbitration Center (SIAC) was established in July 1991 as a non-governmental institution in order to meet the demands of the international business community for efficient, neutral and reliable Asian organization. New rules of SIAC reflecting organizational and governance changes to that institution came into force in April 2013. (*Arbitration Rules of the Singapore International Arbitration Centre SIAC Rules 5th Edition, 1st of April 2013, are available on the website of* www.siac.org.sg).

The new SIAC rules introduced a Court of Arbitration which substitutes the previous Board of Directors. The main area of the Courts tasks are arbitral appointment and case administration functions. Among the Court responsibilities can be listed: rendering decisions on challenges to arbitrators (Rule 13) and jurisdictional challenges (Rule 25). The Court President has an obligation to determine applications for expedited procedures (Rule 5) and to appoint arbitrators (Rules 6 -10).

The new procedural rules promote SIAC not only as an arbitration center dealing with commercial cases but also of investment treaty arbitrations. The SIAC Rules 2013 also facilitate the ability to carry on publishing redacted awards which means that SIAC has now got the discretion to publish awards together with the names of the parties and other information given.

The recent enforcement of new rules is very important with regard to the growing caseload involving international parties. 2012 was a 'boom' year for SIAC because it registered 235 cases involving parties from 39 jurisdictions (*Data from the Kluwer Arbitration Blog: New Rules at the Singapore International Arbitration Centre, published on 14th of May 2013*). Today SIAC is often chosen by investors from China and Hong Kong not only because of good localization but mostly because it hosts all types of arbitration. Without a shadow of a doubt, SIAC will continue to go from strength to strength.

Expropriation and Compensation: The balance to be achieved between the rights of Investors and States

by Deepu Jojo Sushama

Investors seek to state their rights through investment treaties. They strive to build the global value chains that play an increasing role in the modern international economy. They not only create new opportunities for trade but also value-added jobs and income. However, expropriation is used by States in order to obtain compulsory acquisition of property. Such a takeover is recognized as coming within the inherent power of a state over property that is located within its own territory, and as long as the state expropriates only its own property, international law is not implicated in such situations.

However it is not wrongful to expropriate property which lies with a foreign investor, such an action is lawful under customary international law or investment treaties. In most cases when such an expropriation takes place, adequate compensation needs to be paid by the State to the investor but this compensation need not be paid in case. Expropriation may be direct (also described as formal expropriation) or indirect (also referred to as de facto expropriation).

Direct expropriation occurs where the legal title to property is taken, and indirect expropriation occurs where legal title is unaffected but the owner is deprived of the meaningful use of the investment. There is always an ever present tension between what constitutes indirect expropriation and legitimate governmental regulation. This is so as not all governmental interference will amount to a compensable indirect expropriation. The important factors to be considered in such a scenario would include the purpose and effect of the measure, the degree and duration of the interference & the expectations of the investor.

The position regarding compensation for an unlawful expropriation was stated by the Iran-US Claims Tribunal in the Amoco International Finance Corp v Iran arbitration case as an obligation of reparation of all the damages sustained by the owner of the expropriated property arising from an unlawful expropriation. In such a case the rules of international law relating to international responsibility of states apply, which provide for restitution in kind or, if impossible, its monetary equivalent. However in certain cases the State does not have to pay any compensation, this is particularly in cases when there has been forfeiture or criminal acts on the part of the investor.

In the SEDCO case, the Iran-United States Claims tribunal held that forfeiture for a crime is an exception to the rule of expropriation, in the sense that the person affected does not rightfully possess title to the property in question.

It was held in Feldman v. Mexico that, "In the past, confiscatory taxation, denial of access to infrastructure or necessary raw materials, imposition of unreasonable regulatory regimes, among others, have been considered to be expropriatory actions. At the same time, governments must be free to act in the broader public interest through protection of the environment, new or modified tax regimes, the granting or withdrawal of government subsidies, reductions or increases in tariff levels, imposition of zoning restrictions and the like. Reasonable governmental regulation of this type cannot be achieved if any business that is adversely affected may seek compensation…"

However this termination of investment can also be done in accordance with the domestic rules and principles which regulate the extinction of such an investment. In a scenario such as when there is forfeiture of property which is involved in illegal activities, it then comes under the exceptions where the state recognizes that it has fully or substantially deprived the investor but it can still be argued that a compensation is not due.

Customary International law also does not provide for compensation in such cases. As was shown in the case of AGOSI v. UK where the European Court of Human Rights ruled that, "The forfeiture of coins (which the applicant had tried to import into the United Kingdom against the law) did of course involve a deprivation of property but in the circum-

stances the deprivation formed a constituent element of the procedure for the control of the use in the United Kingdom of gold coins such as Kruegerrands". Thus the Court ruled that the Claimant was not entitled to compensation in such cases".

If International minimum standards are followed then the state need not pay compensation on termination of those investments. In the Thunderbird case, the tribunal focused its attention on a somewhat restrictive application of the customary international law minimum standard of treatment. The tribunal commented that, in order to violate that standard, an act must amount to a "gross denial of justice or manifest arbitrariness falling below acceptable international standards." In the Thunderbird case, the investor was involved in the business of operating gaming facilities.

The Mexican Government closed all the facilities and seized the machines operated by the investor after having found out through an investigation that the investor was in possession of illegal gaming equipment. It was held by the tribunal while deciding the expropriation claim that, "Compensation is not owed for regulatory takings where it can be established that the investor or investment never enjoyed a vested right in the business activity that was subsequently prohibited".

The commentary on the American Law Institute's Restatement Third of Foreign Relations Law of the United States, was designed to assist in determining, inter alia, how to distinguish between an indirect expropriation and valid government regulation:

"A state is responsible as for an expropriation of property when it subjects alien property to taxation, regulation, or other action that is confiscatory, or that prevents, unreasonably interferes with, or unduly delays, effective enjoyment of an alien's property or its removal from the state's territory… A state is not responsible for loss of property or for other economic disadvantage resulting from bona fide general taxation, regulation, forfeiture for crime, or other action of the kind that is commonly accepted as within the police power of states, if it is not discriminatory…".

This is also an accepted principle of customary international law that where economic injury to non-nationals results from a bonafide, non-discriminatory regulation within the police powers of the state then in such cases there is no need to pay any compensation.

Expropriation is not defined by Investment treaties and due to this the arbitral tribunals must necessarily have recourse to general international law while dealing with them, When it comes to compensation, which is to be paid for indirect expropriation, international law is yet to carve out a comprehensive and definitive test of which regulations can be considered as acceptable within the regulatory power of the State hence non-compensable. This was also stated in the case of Saluka Investments BV (The Netherlands) v Czech Republic. Thus, it is still under discussion as to where the line is to be drawn between non-compensable regulations on one hand and the measures that have the effect of depriving foreign investors of their investment on the other and are thus unlawful and compensable in international law.

Book Review: International Arbitration and Corporate Law: An OHADA Practice

by Olivia Staines

International Arbitration and Corporate Law by Benoit Le Bars, is an updated edition of his first book Pratique du droit des sociétés en droit de l'OHADA, which was previously only available in French. The book opens with a stimulating foreword by Justice Geoffrey Kiryabwire of the Court of Appeal and Constitutional Court of Uganda. The OHADA treaty (translated in English as the Organisation for the Harmonization of Business Law in Africa) was formed in 1993 and covers 17 African States, most of which are from francophone west and central Africa.

The OHADA corporate and arbitration laws are distinctive due to the fact that they apply to all Member States of OHADA which have a common legal structure and common rules for regulating commercial companies. Recent statistics on the settlement of disputes in the Court of Arbitration reveal that over 59% of arbitration's involving African countries involve parties from sub-Saharan Africa. In addition, half of the Member States of OHADA resorted to ICC arbitration in 2009.

The Uniform Act on Arbitration organizes a mechanical resolution of disputes organized on two pillars. On the one pillar, the principles that will apply to any arbitration based in one Member State. On the other, their own institutional OHADA arbitration, organized under the Common Court of Justice and Arbitration.

Accordingly, the book is divided into three sections accompanied by annexes. The first is composed of an introduction which covers general corporate law: notably incorporation of companies, operation of companies and crisis management. The second examines specific corporate law with reference to: limited liability companies and unlimited groups and companies. The third analyses the law of corporate groups and restructuring. Specifically: restructuring mergers, scissions and partial asset transfers and key material on groups, branches and subsidiaries.

The chapter on crisis management is particularly thought provoking as it discusses in detail how arbitration can be used in the corporate crisis management context and how the Uniform Act on Arbitration can be used to resolve investment disputes especially those of an international nature. The author highlights the fact that parties who wish to turn to arbitration can opt for either institutional or ad hoc forms under the OHADA system and looks at the Common Court of Justice and Arbitration (CCJA) as an example of a provider of institutional arbitration.

In this way, Benoit Le Bars proficiently manages to bridge the gap of understanding between the French continental legal system and the English Common Law system. The book therefore provides for an extremely effective overview of business and dispute resolution in Francophone Africa. We highly recommended this publication to investors, legal practitioners, law students and researches who wish to carry out comparative legal analysis.

To purchase this book, please visit the eleven international publishing website.

Book review: The Complete (But Unofficial) Guide to the Willem C Vis International Commercial Arbitration Moot

by Deepu Jojo Sushama

The Complete but Unofficial guide to the Willem C Vis International Commercial Arbitration Moot edited by Dr. Jorg Risse and published by Beck, Hart and Nomos, is a practical book which can be used when preparing to participate in the unique Vis Moot court competition in Vienna.
The Willem C Vis moot is hallowed ground for law students all over the world as it is one of the most reputed international moot court competitions for law students in the world. The moot has been held annually in Vienna since 1994. Conversely since 2004, its prestigious sister moot court competition has also been held in Hong Kong.

The author of this book review, being a Vis Moot court alumnus, appreciates how much a book like this would be useful for the participants of the Willem C Vis moot Court. Participants spend extremely long hours preparing for the competition and having a book like this as a guide would be an invaluable tool for all concerned.

Moot courts are instrumental to law students because of the fact that it provides them with hands on experience of what it is like to practice law by applying theoretical knowledge to a mock case. However, many lack experience in writing memoranda and preparing their presentations. This is where the complete and unofficial guide comes in particularly handy.

The book is divided into eight carefully divided parts and deals with issues such as the facts and figures of the moot court, how to start with the moot court, how to write an effective memoranda, how to present your case before the arbitral tribunal, how to spend 7 days in Vienna or Hong Kong, how to stay involved with the moot court even after its over and the interesting views on International Arbitration shared by people around the world.

The publication is mainly targeted towards potential participants whether they are students or coaches. It provides countless details that a participant would appreciate such as insights provided by Vis moot court alumni. There are undoubtedly situations when a participant in the Vis moot court is likely to be searching for proper guidance whether it is as simple as searching for details on the process of applying for the moot or whether it is as decisive as how to structure the presentation of their case.

The publication is a go- to manual for all related queries. A major strength is that the guide also provides assistance to people who are interested in pursuing a career in arbitration.
In sum, The Complete (But Unofficial) guide to the Willem C Vis International Commercial Arbitration Moot is a valuable addition to the armory of any person who wishes to be part of the Vis moot court. We recommend it to students and coaches alike.

For more information on how to purchase the book, please visit the link.

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Membership of AIA takes the form of yearly subscriptions. All members benefit from the following advantages:

- An online profile on our website.
- Possibility to publish articles on ADR in the AIA newsletter.
- Opportunity to publish events in our newsletter for a reduced rate.
- 50% discount for all AIA events from March 15, 2014.
- Free ticket to Future Mediation in Belgium sessions.
- 500 € reduction on the European Mediation training for Practitioners of Justice (EMTPJ) in addition to early bird reduction.
- 20% Discount on books published by Kluwer and If members would like to subscribe to KluwerArbitration.com, Kluwer may offer a special price for subscription.
- Access to our arbitration library.
- Access Corporate Disputes Magazine.

The annual membership fee is 200 €, or 150 € for members under 40 years of age (VAT excluded). Follow the following link for details and to fill in our online form at the bottom of our Membership page to sign up for 2014.

Conference "Entrusting Antitrust Issues to Arbitration"

The Association for International Arbitration encourages you to attend the international conference "Entrusting Antitrust Issues to Arbitration" in Brussels on May 19th, 2014. It will be a unique event tackling challenging and specialised areas – competition law and arbitration. The major topics include:

Arbitration in merger control.

EU competition law before arbitrators and the future of private antitrust enforcement in Europe.

Court review of arbitral awards dealing with EU Competition Law issues.

Moreover, many of the leading experts in the field of antitrust arbitration will be present. Confirmed panellists and moderators are Ms. Janice Feigher (Castaldi Mourre & Partners), Mr. Bart Volders (Stibbe), Mr. Assimakis Komninos (White & Case), Mr. Gordon Blanke (Baker & McKenzie), Mr. Marc Blessing (Bär & Karrer), Ms. Iuliana Iancu (Hanotiau & van den Bergthey), Mr. Christoph Liebscher (Wolf Theiss), Mr. Luca Radicati di Brozolo (Catholic University of Milan), Mr. Renato Nazzini (King's College London).

For more information and registration, please visit the Conference page.

AIA CALL FOR SPONSORSHIP PARTNERS 2014

The Association for International Arbitration is seeking Sponsorship Partners from the 31st of January 2014 to the 31st of December 2014. In particular AIA offers the following Sponsorship Packages: Bronze, Silver and Gold.

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-100 words of company information in AIA Network Booklet and on website under Sponsorship Partners tab, title: 'AIA Bronze Partners'
-Partnership status visible at AIA events and on promotional material
-Company logo on AIA website
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-Company logo in AIA's monthly newsletter 'In Touch'
-3 free passes for company delegates to AIA events [excluding EMTPJ training]

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-½ a page in AIA Network Booklet and on website under Sponsorship Partners tab, title:
'AIA Silver Partners'
-Partnership status visible at AIA events and promotional material
-Company logo on AIA website
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-Possibility to distribute promotional materials at events in participants' handouts
-6 free passes for company delegates to AIA events [excluding EMTPJ training]
-Opportunity to host own AIA event (topic, time and venue to be agreed)

- Gold

-1 page in AIA Network Booklet and on website under Sponsorship Partners tab, title: 'AIA Gold Partners'
-Partnership status visible at AIA events and promotional material -Company logo on AIA website
-Company logo on the screen at our events
-Possibility to distribute promotional materials at events in participants' handouts
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-9 free passes for company delegates to AIA events [excluding EMTPJ training]
-1 free pass for AIA's European Mediation Training for Practitioners of Justice (normal price= 4,500 Euro VAT Excl.)
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Contact the AIA Team via administration@arbitration-adr.org for details!

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Launch of The Brussels Diplomatic Academy 4 Day Seminar on Investment Arbitration

VUB University, Brussels

The Brussels Diplomatic Academy has organised a 4 day Seminar on Investment Arbitration. During the course of the seminar, fundamental notions relevant to investment arbitration will be analysed and a number of major cases will be reviewed in a critical manner.

We highly recommend the event to:

- investors and diplomats involved in economic diplomacy
- government officials responsible for negotiations of investment treaties and involved in representing a state in dispute resolution proceedings
- lawyers and in-house counsel
- civil servants involved in state's investment policies.

This is an unique opportunity and therefore not to be missed!

More information

The Court of Arbitration For Sports: The importance of transnational organizations on the creation of Law

by Daniel Morgado

Sports are essentially a collective activity based on a set of rules which require a uniform standard for effective implementation. Sports Law was thereby established in order to regulate disputes in this field on a transnational rather than governmental level. The Court of Arbitration for Sports (CAS), created in 1984, is the most important body in this context. The CAS was formally established by the International Olympic Committee (IOC) located in Lausanne, with the purpose of solving a variety of sports related disputes through an arbitral institution.

The underlying initiative to generate a Supreme Court for sports on a global level is working effectively, because the court is not only acting as a panel of arbitrators for different disciplines, but also establishing precedent in many sports related conflicts. For example, disputes can be handled after the first instance by the FIFA Dispute Resolution Chamber (DRC) on football, FIBA Arbitral Tribunal (FAT) on basketball and FINA Doping Panel (FDP) on swimming. Its jurisdiction is therefore broad, extending to all activities connected to sports.
However, its purpose wouldn't be applied if sports organizations didn't comply with its decisions. They are giving automatic recognition and enforcement to sports related arbitral awards. Currently, numerous sports don't need to enforce their arbitral awards because sanctions on sports arbitration are administrative and therefore not based on a judicial judgment.

This is the most important feature of Sports law, because organisations don't need to fulfil major requirements in order to execute arbitral awards into national courts or impose sanctions, neither athletes nor institutions are impeded from taking part in an international competitions. In other words, certain institutions are creating their own legal system through the binding force of their judgments, outside of traditional national legal systems. Although the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards is a cornerstone tool to be considered by many countries and participants on sports' ADR options, the sports' bodies have been created in such a way that they can impose threats and sanctions to ensure people comply with sports law without having to take action on a national level.

This is an influence that can be expressed in 2 ways. First of all, it can be seen in the importance of CAS awards and their priority over national judgements. This was the case where a Brazilian football player was hired by a Mexican team to play for 4 years. He breached his contract and returned to Brazil without stating his reason after 1 year. In consequence, FIFA suspended him from playing worldwide. However, a national labour court in Brazil granted authorization to play in a Brazilian team called *Atletico Mineiro*, based on the constitutional right of the player to work. After that, the Mexican team filed a claim via the FIFA dispute Resolution Branch. They complained to the FIFA Players' Committee, which found the player to have breached his contract and ordered him to restitute the US$1 million transfer fee. If he failed to pay, *Atlético Mineiro* would be jointly liable. This decision was challenged by the player and by *Atlético Mineiro* before CAS, and they confirmed the latter decision with few changes. Accordingly, if the player did not pay US$750,000 within 30 days of the award, being granted, *Atlético Mineiro* would be required to make the payment.

The Brazilian Federation had to ensure that *Atletico Mineiro* complied with the award. Otherwise, the federation would face disciplinary action by FIFA in the form of exclusion from international competitions. In other words, Brazil wouldn't attend the World Cup. That was not an option, and consequently the parties had to comply with the award based on FIFA's threat.

Second of all, it is really important to consider the scope of awards and the weight of those pronouncements based on the power granted by parties. For example, very recently in the context of the Winter Olympic Games in Sochi, one Argentinean skier filed a claim against the Argentinean Ski Federation (FASA) and the Argentinean NOC (COA), because she claimed she had been discriminated against by the COA, which is incompatible with the Fundamental Principles of Olympism.

This claim was filed to the temporary office established in Sochi for the 2014 Winter Olympic Games. The ad-hoc panel rendered an award where it was stated that they don't have jurisdiction, but they considered the merits of the case and stated an opinion. They said that even if the ad hoc Division had jurisdiction, the athlete's claims on the merits would have failed as she was not able to establish that the COA decision was discriminatory.

It is interesting that the arbitrators expressed an opinion because they said in their award that they did not have the competence to render an award on the subject. FASA was recommended by the CAS to: establish and publish selection criteria to enable athletes to determine the Olympic Games qualification standards they are required to meet in a timely manner.

In consequence, the CAS in the Argentinian skier case rendered an award going further than the parties asked by pronouncing their opinion rather than simply rejecting the case based on their lack of competence.

In conclusion, the importance of Sports Law and specifically the CAS, is the fact that they are an example of the functioning of legal systems created outside of national law. It is

important to consider that the attitude of the members of a community towards a normative rule is that of acceptance of the rule as a standard for guiding their own conduct and for evaluating the conduct of the other members of the community. The sports community is organized in this way. Therefore, we have to pay attention to sports, because they are getting the uniformity and recognition of awards that the business community and even the UN have not managed to receive at the present time.

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