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AIA Upcoming Events:

International Conference "Entrusting Antitrust Issues to Arbitration"

LOCATION: Court of Appeal of Brussels, Salle des Audiences Solennelles,
Room 1.35, Place Poelart 1, 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:

Janice Feigher (Castaldi Mourre & Partners),

Bart Volders (Stibbe),

Assimakis Komninos (White & Case),

Gordon Blanke (Baker & McKenzie),

Marc Blessing (Bär & Karrer),

Iuliana Iancu (Hanotiau & van den Berg),

Christoph Liebscher (Wolf Theiss),

Luca Radicati di Brozolo (Catholic University of Milan),

Renato Nazzini (King's College London),

Manuel Penadés (London School of Economics / University of Valencia).

[Click here for details and registration](#)

AIA Upcoming Events

EMTPJ 2014 Great New Offer!

Future of Cross-Border E-Commerce Dispute Resolution: UNCITRAL and EU Approached to Online Dispute Resolution

The Role of the Judiciary in Singapore in Promoting the Country as an Arbitration Friendly Nation

Seminar On Collective Redress Through ADR 12th of March 2014 Report

Book

Review: Introduction to Arbitration in India; the Role of the Judiciary

The connection between Maritime Arbitration and International Commercial Arbitration

Conference "Entrusting Antitrust Issues to Arbitration"

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Future of Cross-Border E-Commerce Dispute Resolution: UNCITRAL and EU Approached to Online Dispute Resolution

by Tatiana Proshkina

The value of online exports in six of the top e-commerce markets is predicted to grow fivefold in six years, according to a study by London-based management consultancy OC&C and US search engine Google. One of the key components for the successful functioning of any business involved in e-commerce is having efficient mechanisms to resolve disputes arising from online transactions. Such disputes mainly concern the business to consumer (B2C) segment where court proceedings can be counterproductive. Alternative dispute resolution (ADR) corresponds much better to the needs of the parties in such disputes. The most logical way to solve e-commerce disputes is to use ADR through the internet. Thus, online dispute resolution (ODR) is gradually gaining more attention from all the key players in e-commerce at present.

It is important to distinguish between ODR and dispute resolution facilitated by IT means. The latter is the use of the technologies in the course of traditional procedures. For example, many law firms introduced their own file sharing systems that allow parties to file gigabytes of documents in a fast and secure way. Arbitral institutions like ICC, AAA and WIPO have launched online platforms that allow quick and secure exchange of correspondence and documents between parties and arbitrators.

Two of the most notable developments in the cross-border e-commerce dispute resolution field are the work of the UNCITRAL Working Group III and the recent EU legislation on Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR). While the former is in the discussion stage, the latter already announced that an EU-wide online platform will be set up by 2016 for disputes that arise from online transactions. Both of these approaches are reviewed below.

UNCITRAL draft Rules on online dispute resolution in cross-border electronic transactions

From 2010, the UNCITRAL Working Group III is focusing on the development of a global ODR system for low-value high-volume cross-border disputes, both B2B and B2C. According to the Preamble of the UNCITRAL Draft Rules on ODR (Draft Rules), the ODR framework will include the Guidelines and minimum requirements for ODR providers; the Guidelines and minimum requirements for neutrals; Substantive legal principles for resolving disputes; and the Cross-border enforcement mechanism. This is an ambitious and far-reaching project

The Role of the Judiciary in Singapore in Promoting the Country as an Arbitration Friendly Nation

by Deepu Jojo

Recent decades have witnessed the exponential growth of Arbitration in Asia and one country, which has been at the forefront of leading this revolution in Asia, has been the small but extremely efficient state of Singapore. It has been said that Singapore's arbitration friendly stance provides an ideal model for other countries to emulate.

A decade ago, Singapore was not at the forefront of the global international arbitration stage. Today, it is backed by the Singapore International Arbitration centre, Maxwell chambers, a judiciary and a Government which is pro-arbitration.

Apart from the presence of internationally renowned centers such as SIAC, the judiciary of Singapore has also played a major role when it comes to promoting Singapore as a favored arbitration centre. When it comes to examining the public policy doctrine and the obligation to enforce arbitration agreements and foreign awards, the courts of Singapore have always strived to promote arbitration.

The courts in Singapore have preached the anti-interventionist attitude when it comes to arbitration. Since Singapore is a pro-arbitration state, setting aside proceedings are not often encouraged. Under the Singapore International Arbitration Act (Cap. 143A), an international arbitration award may only be set aside on very limited grounds, namely where:

1. a party to the arbitration agreement was under some incapacity; or the arbitration agreement is not valid;
2. the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
3. the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, or
4. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with Singapore law; or
5. the subject-matter of the dispute is not capable of settlement by arbitration under Singapore law; or
6. the award is in conflict with the public policy of Singapore; or
7. the making of the award was induced or affected by fraud or

which, if successful, will establish a new paradigm for dispute resolution for e-commerce. To date the UNCITRAL has commenced its work on the Draft Rules but has not yet produced drafts of any other rules or guidelines.

The Draft Rules are intended to serve as model rules which ODR providers and parties may use on a voluntary, contractual basis. Importantly, the UNCITRAL has no intention of superseding national mandatory laws. The main features of the Draft Rules are their applicability to B2B and B2C disputes and the two-track set of provisions.

Many representatives raised the question of validity of a pre-dispute arbitration agreement in consumer contracts. National laws diverge on that question. To accommodate jurisdictions in which agreements to arbitrate concluded prior to a dispute are considered binding on consumers, as well as jurisdictions where pre-dispute arbitration agreements are not considered binding on consumers, the two-track system was proposed. The Rules will include two sets of provisions depending on whether the consumer's domestic law permits a pre-dispute arbitration agreement to be binding. Track I, Binding Option, ends in arbitration and all parties will be bound by a final award. Track II, Non-Binding Option, proposes ODR with a non-binding result.

Pursuant to a two-track system, merchants, at the time of the transaction, will generate two different online dispute resolution clauses, depending on the jurisdiction and status (business or consumer) of the purchaser. Consumers from jurisdictions in which pre-dispute agreements to arbitrate were not binding on them, would, at the transaction stage, be presented with a dispute resolution agreement providing for ODR with a non-binding result.

Consumers from jurisdictions in which pre-dispute agreements to arbitrate were binding on them, and business purchasers, would be presented with a dispute resolution agreement providing for ODR ending in an arbitration stage. In order to determine the track, purchasers will need to provide two simple pieces of information: (i) their shipping or billing address; and (ii) whether they were a consumer. A vendor's website will automatically offer the appropriate dispute resolution clause to the prospective purchaser at the time of transaction.

The biggest concerns relate to the enforceability of the final decisions. It is doubtful that online awards will be recognisable and enforceable under the New York Convention. Other options that might be used to enforce awards were discussed in the course of the last session of the Working Group in November 2013. Some suggested the use of trustmarks and the certification of merchants as an alternative. However, these private enforcement mechanisms positively operate on the domestic level mainly because there is also an option to recourse to binding domestic arbitration or litigation. Whether they will operate effectively within the international setting is questionable. The next session of the Working Group that will take place in 24-28 March 2014 will have to address this issue in more detail.

The EU observer delegation expressed numerous concerns regarding the drafting of ODR Rules on the arbitration model. In the view of the EU, many successful ODR processes today are not designed with the arbitration model in mind. They do not provide for outcomes which are binding on the buyer, while compliance with the procedural outcome is effectively ensured through private enforcement mechanisms. The EU delegation argued that arbitration is too heavy a mechanism for low-value consumer transactions and that enforcement under the New

corruption; or

8. a breach of the rules of natural justice occurred in connection with the rendering of the award

In the recent case of TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd, [2013] SGHC 186, the Honourable Justice Chan Seng Onn stated that, "As is well-established under Singapore arbitration jurisprudence, the power to intervene in arbitrations generally, and more specifically to set aside awards, must and should only be exercised charily, in accordance with the rules under the applicable arbitral framework".

Recently the Court of appeals in Singapore rendered a landmark judgment in the case of Astro v. Lippo, [2013] SGCA 57. This case has been compared in importance to the influential case of Dallah v. Pakistan. As a result of this judgment the "choice of remedies" was confirmed for domestic international awards rendered in Singapore. The Singapore International Arbitration Act has thus been brought into conformity with the UNCITRAL Model law.

Parties which are involved in domestic international arbitration matters presently have the freedom to actively challenge an award or wait until the award is sought to be enforced in Singapore. This increases aspects such as efficiency, tactical considerations and timing.

Through the recent decision rendered by the Court of Appeal in AJU v. AJT, [2010] 4 SLR 649, the Singapore Courts indicated that they have excellent knowledge of International Arbitration. Chief Justice Chan Sek Keong went on to observe in the case, that enforcement of a foreign award could be resisted on public policy grounds only where "exceptional circumstances... would justify the Court in refusing to enforce the award" or where there was a violation of "the most basic notions of morality and justice.

In the case of Insignma Technology Co Ltd v Alstom Technology Ltd, [2009] 3 SLR (R) 936, the principle of party autonomy was given a major boost by the Courts of Singapore. The parties entered into a license agreement which provided for disputes to be resolved by arbitration "before the Singapore International Arbitration Centre" in accordance with "the Rules of Arbitration of the International Chamber of Commerce".

It was stated by the Court of Appeal that the courts should take into consideration the clear intention of the parties to settle any dispute by arbitration. This is to be done even if certain parts of the agreement are inconsistent, ambiguous incomplete or lacking in certain particulars. The court used the principle of effective interpretation to point out that an arbitration agreement should not be interpreted restrictively or strictly, as it is not a statute.

Further the court stated the importance of using a logical construction when it comes to interpreting arbitration agreements. The final ruling of the Court was that there were no public policy considerations which had barred or prevented SIAC from administering the arbitration and the clause which was made by the parties was an operable one.

In Quarella SpA v. Scelta Marble Australia Pty Ltd, [2012] SGHC 166, the Italian party wanted the award to be set aside and argued that the sole arbitrator had decided wrongly to make the applicable law of the contract Italian law. The High Court of Singapore ruled that an incorrect application of the applicable law as agreed between parties as opposed to a refusal to apply the agreed applicable law did not attract the provisions of Article 34 (2) (a) (iii) of the Model Law to

York Convention would be too complicated for a consumer. In order to enforce an arbitral award, the award creditor (claimant) needs to go to the local enforcement court at the place where the award debtor (respondent) has his assets and request that the award be declared enforceable.

In short, the EU prefers an ODR process not modelled on arbitration.

The EU approach to online dispute resolution

The recent EU legislation on the issue includes the Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes (Directive) and the Regulation No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes (Regulation). Both are aimed at allowing consumers and traders to solve their disputes without going to court, in a quick, low-cost and simple way.

The Directive establishes the basic obligations of ADR entities, applicable legal principles and functions to be developed by the Member States. The Regulation establishes and regulates the functioning of the European electronic platform for ODR between consumers and traders regarding contracts concluded by electronic means within the EU through the intervention of an ADR entity. Member States are required to implement the Directive and Regulation by July 2015. Also, an EU-wide online platform for disputes arising out of online transactions will be launched by January 2016.

While the EU legislator (like the UNCITRAL) regards ODR as an important mechanism for solving cross-border e-commerce disputes, the EU proposals have as their central focus and aim the improvement of consumer protection (unlike the UNCITRAL). The idea is that increased consumer protection, effectiveness of ADR and high standards will increase trust in ADR and ultimately e-commerce in the Internal Market.

Instead of creating one international ADR scheme with the ambition of global operation, the EU has chosen to integrate the ADR mechanisms already existing in various Member States and to make them function more effectively across a border. This also explains why the EU did not propose a draft set of procedural rules, since it prefers to leave procedural rules to the national ADR scheme. This can be seen as a more realistic approach to ADR, as it makes use of existing resources and schemes.

**Seminar On Collective Redress Through ADR
12th of March 2014 Report**



Introduction

The president of AIA opened the discussion on the topic of Collective Redress through ADR, by raising concerns regarding the EU's recommendation on common principles of collective redress and private international law issues. In particular, Johan Billiet touched on the fact that the European legislature has been criticized for missing the opportunity to provide rules on international jurisdiction, recognition and the applicable law designed for cross-border mass

cause the award to be set aside.

While stating this the Court also emphasized upon several decisions of the Singapore Court which have taken the view that the error of law by fact itself does not attract the power of courts to set aside an arbitral award.

Further, in the case of PT Prima International Development v Kempinski Hotels SA, [2012] SGCA 35, the decision of the Singapore High Court was reversed by the Singapore Court of Appeal. The Singapore High Court had earlier set aside 3 of the 5 awards which arose out of arbitration between parties on the basis that the award had been decided on a point which was not properly pleaded.

The High Court had held that the Arbitrator had acted beyond the scope of his authority. While overturning the decision of the High Court, the Court of Appeal considered that the important aspect was whether the wronged party was really prejudiced by the acts of the other party; thereby the Court avoided a formalistic approach to pleadings in arbitration.

Even though the domestic market of Singapore is small, Singapore has a very strategic location which provides easy access to India, Indonesia, Malaysia and the rest of South East Asia. This has played a major role in attracting more potential customers to avail services offered by Institutional arbitration bodies such as SIAC. This coupled with an extremely capable judiciary has ensured the position of Singapore among the best venues for arbitration in the world.

Through these judgments the pro-arbitration stance taken by the Courts of Singapore can be clearly seen. The courts of Singapore are not keen to set aside awards or to refuse the enforcement of foreign awards. They will try their best to uphold the validity and effectiveness of an arbitration agreement.

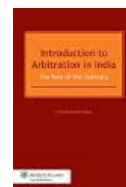
This is precisely the reason for the growth of Singapore as a centre of International Arbitration. This coupled with the strategic location of Singapore which provides easy access to India, Indonesia, Malaysia and the rest of South East Asia has ensured the position of Singapore among the best venues for arbitration in the world.

The Singapore judiciary's attitude towards arbitration can be effectively seen through a quote made by Court of Appeal in Tjong Very Sumito v Antig Investments Pte Ltd., [2008] SGHC 202, " An unequivocal judicial policy of facilitating and promoting arbitration has firmly taken root in Singapore..the role of the court is now to support , and not to displace, the arbitral process".

Book Review:

Introduction to Arbitration in India: The Role of the Judiciary

by Olivia Staines



litigation. Consequently, reference was made to the increasing importance of forum shopping for plaintiffs in mass damage cases. It was highlighted that, due to the absence of a framework for collective redress, Member States have had divergent attitudes towards reform.

For example on the one hand, Germany has confronted considerable political resistance to the implementation of new instruments, whilst group action proceedings have been available for some time in Italy, Bulgaria, Spain, Portugal and Nordic countries. Conversely, reference was made to the Dutch Collective Settlement Act (WCAM) enacted in 2005, which has been successful in terms of the number of claimants and amounts of money involved.

1. Collective Redress on an EU Level and Mass Consumer Claims

In light of this introduction, Speaker Jacek Garstka- legislative officer at the European Commission, turned to consider the European Commission's Initiative on Collective Redress 2013 in detail. A general reflection was provided on the fact that the need for effective collective redress mechanisms in this context appeared approximately 30 years ago. Competition policy and consumer rights resulted in the Commission adopting a Green Paper on antitrust damages actions in 2005 and a White Paper in 2008, which included policy suggestions on antitrust-specific collective redress. The European Recommendation's lack of popularity due to the fact that it fails to bind member states was considered. However, it was mentioned that this signifies the beginning of something promising, and not the end of the road. It was highlighted that the key of the Recommendation on collective redress lies in the fact that it provides an appropriate legal vehicle to defend rights. Ultimately, collective redress means to make sure that proper compensation is granted to harmed people. Despite this, concerns with regard to the opening and broadening of access to justice and safeguards were mentioned. Both fairness and accessibility are therefore key.

Ms. Maciuleviciute of BEUC; the European Consumers Organization, subsequently took the floor and examined the significant divergence between Member States. Crucially, reference was made to the fact that consumers do not enjoy the same possibilities to claim redress in the Single Market even though it is often the same infringement that is the cause of complaints in different countries. The recent scandals on defective breast implants, unsuitable financial products, misleading practices regarding mis-information of the consumers concerning the guarantee rights and cartels of mobile providers or pharmaceutical companies were highlighted. An example given was that of the Swedish National Board for Consumer Disputes (the main Consumer ADR body in Sweden, in operation for 50 years).

Following an assessment of Sweden, the UK Financial Ombudsman Service (one of the leading ADR bodies in the EU with over 200,000 new cases a year) was analysed. It was highlighted that the FOS has no formal collective redress mechanisms, but has the flexibility to develop various strategies to address multiple claims. In the Netherlands the system of collective settlement has deemed to be successful for a number of big mass claims cases including those of DES, Dexia bank and Shell. An important feature of the system considered was the active role of the Amsterdam court, which approves the settlement.

2. Arbitration and Class Actions in Sweden and Portugal

Ms. Sara Ribbeklint, Senior Associate at MAQS Law Firm gave a presentation on the Class Action system in Sweden, together with Mr.

An Introduction to Arbitration in India written by Tushar Kumar Biswas and published by Wolters Kluwer, examines the effectiveness of international commercial arbitration in the Indian legal context.

Specifically, the role of the Indian judiciary in arbitration is brought into question, following numerous controversial decisions rendered by the courts in recent years.

In line with the globalization of trade and investment, a parallel increase in commercial disputes has been noted. International arbitration is becoming increasingly popular to solve such matters, as it avoids party's having to be subjected to their adversary's court system.

However, as Biswas argues, this does not detract from the fact that national states and their legal systems still play a vital role in governance. For example, in the case of court and arbitrators power to provide interim measures, it is explained that in India, the court is conferred with greater power than the arbitral tribunal. Conversely, in light of the applicability of Indian laws in international commercial arbitration in general and interim measures in particular, in cases where arbitration takes place, outside India, there have been a series of judicial decisions which contradicted each other.

Specifically, the case of *Marriott International Inc*[1999] was overruled by the Supreme Court in *Bhatia International* [2002] which, in turn was subsequently overruled by the *Kaiser Aluminum* decision. The result of the very detailed analysis provided, illustrates efforts towards possible reforms that could bring India more proficiently into line with trends in global commerce.

A key strength of the publication is its clear structure and attention to detail. It is divided into eight chapters each of which is accompanied by a conclusion. Two appendices consisting of *The Arbitration and Conciliation Act 1996* and the *Appointment of Arbitrators by the Chief Justice of India Scheme 1996* are provided at the end of the text.

Focus is given to matters relating to appointment of arbitrators, availability and applicability of interim measures, the doctrine of competence, challenging the arbitrator in respect of independence and impartiality, anti-suit injunctions, setting aside of arbitral awards or refusal to enforce foreign awards, right to appeal and India's liability regime under international investment laws for judicial delay.

In sum, we highly recommend this book to businesses and their counsel as well as to students, academics and researches alike. For more information on how to purchase this publication, please visit the [Wolters Kluwer](http://WoltersKluwer) website.

We recommend KluwerArbitration.com to our readers conducting research in the field.

Conference "Entrusting Antitrust Issues to Arbitration"

Court of Appeal of Brussels, Salle des Audiances Solennelles, Room 1.35,
Place Poelart 1,
Brussels, Belgium

19th of May 2014

António Pedro Pinto Monteiro, Associate at PLMJ Law Firm, who in turn examined the national system in Portugal.

Accordingly, it was explained that in Sweden, the Group Proceedings Act applies to most areas of civil law, with the exclusion of labor law and marketing law. The conditions for group actions were examined. It was clarified that there are no statutes for defining a group and there are no minimum numbers of claims that can be managed under the procedure. It is the court which decides whether a group action is appropriate.

Ms. Ribbeklint highlighted that The Arbitration Act and the SCC Rules are silent with respect to class action arbitrations. The new Arbitration Act (which entered into force in 2000) stipulates that in the case of a dispute between a business enterprise and a consumer, an arbitration agreement concluded before the dispute arose is invalid. All foreign arbitral awards are enforceable in Sweden.

Ultimately, a foreign class action arbitral award might be recognized and enforced by the Swedish courts in line with the underlying principles of the New York Convention. However, The Arbitration Act of 1999 is currently subject to review by the Ministry of Justice, but there are no known changes contemplated which would have any impact on class action arbitrations.

Mr. António Pedro Pinto Monteiro contemplated the situation in Portugal which has the so called popular action mechanism, originating from Roman law – “*actio popularis*” and highlighted in the Constitution. It was elucidated that there are two types of popular action: an administrative popular action and a civil popular action which can be injunctive or remedial. Mr. Monteiro indicated that the most important and controversial point of the Popular Action Law is the special regime of representation contemplated in articles 14 and 15 (opt-out system) and also, the res judicata effect (claim preclusion) in article 19.

This controversy lies in the fact that someone can be represented in a popular action without even knowing it, yet be bound by the judgment since he has not opted out. With regard to the popular action's application by the courts, it was concluded that such a mechanism is not very common in Portugal and has been little used in practice. Ultimately, “Class arbitration” is not recognized in Portugal. Mr. Monteiro contemplated whether arbitration and class actions could be combined in Portugal. It was established that in the future, it could be conceivable, if a new Popular Action Law is approved and if institutional arbitral centers adopt special rules on this issue.

3. *The New Belgian Class Action Bill & Principled Negotiation and Mediation in Collective Redress: The Case of Belgium*

Mr. Philippe Billiet of Billiet & Co Law Firm, examined the Belgian Class Action Bill. Focus was thereby given to Consumer against Business (C2B). Mr. Billiet highlighted two tracks:

1. The ‘reduced track’: Admissibility + Homologation + execution stage (Inspired by the Dutch system) and
2. The ‘full staged process’ (Inspired by the Quebec system)

He clarified that the terms ‘Reduced track’ and ‘Full staged processes’ were not official terms. Fundamentally, it was explained that the bill applies to new collective damage after entry into force. Competence is reserved to the Tribunal of First Instance and the Commercial

Tribunal. Appeal is reserved to the Court of Appeal in Brussels

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.

MONDAY 19 MAY 2014: THE PROGRAM

12,00 - 12:15	Registration with coffee and sandwiches
12:15 - 12:30	Conference opening: Johan Billiet / Philippe Billiet
12:30 - 12:50	Key-note address: Gordon Blanke
	Session 1 - ARBITRATION IN MERGER CONTROL Moderator: Marc Blessing
12:50 - 14:00	Panelists: Janice Feigher, Bart Volders, Manuel Penadés
14:00 - 14:15	Coffee break
	Session 2 - EU COMPETITION LAW BEFORE ARBITRATORS AND THE FUTURE OF PRIVATE ANTITRUST ENFORCEMENT IN EUROPE
14:15 - 16:30	Moderator: Iuliana Iancu Panelists: Assimakis Komninos, Gordon Blanke, Marc Blessing
16:30 - 16:45	Coffee break
	Session 3 - COURT REVIEW OF ARBITRAL AWARDS DEALING WITH EU COMPETITION LAW ISSUES
16:45 - 18:15	Moderator: Tatiana Proshkina Panelists: Christoph Liebscher, Luca Radicati di Brozolo, Renato Nazzini
18:15 - 18:30	Concluding remarks
18:30 - 20:30	Networking event

For more information and registration, please visit the Conference [page](#).

Support the Future of Mediation In Belgium (FMB) Initiative!

The FMB initiative is an initiative that aims to provide a joint communication platform to all mediation stakeholders, thereby offering them the opportunity to contribute to identifying best practices (including legal amendments) and setting out a common action plan for the enhancement and promotion of Mediation in Belgium.

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).

thereby illustrating a centralised system. This was broken down and analysed in five steps: admissibility assessment, composition of groups, compulsory negotiation stage, and procedure on merits/homologation of settlement. It was emphasised that a group for the purposes of the bill is considered to be a group of consumers who have personally incurred damage caused by the same source. Community is therefore a key element.

The Ruling binds all group members (exception: if the consumer demonstrates that he could not reasonably have received knowledge of the admissibility ruling within the term for execution of option rights). The Judge maintains a supervisory role until the homologated settlement/ruling on merits has been fully executed. The execution stage terminates when judge approves final report of the claims officer. The terminating decision is published in the Belgian Official Journal and online (website FOD Economy).

To conclude the seminar, Mr. Meuwissen, expert negotiator, mediator and a founder of Meuwissen & Co Law firm considered the role of negotiation and mediation in collective redress in Belgium. Specifically, the Commission Recommendation of the 11th of June 2013 was examined. This highlights that ADR techniques should be used in the case of Collective Redress. Accordingly, it was established that Belgium has consistently applied principles of the Recommendation. The Belgian Collective Redress Bill of the 17.01.2014 was considered in detail. Namely the use of: 1. Voluntary Negotiation / Mediation, 2. Mandatory Negotiation / Mediation and 3. Renegotiation / Mediation.

Mr. Meuwissen considered the fact that this idea of a judge imposing/directing parties to negotiation / mediation is new in Belgium and may be inspired by certain ECJ cases where it was ruled that under EU law it is possible to require parties to go to mediation and negotiation. He also emphasized that direct negotiation is possible for a simple case but that the more complex cases require mediation.

Concluding remarks:

In sum, the seminar highlighted the growing significance of the development of collective redress, the crucial role that Institutions have in this process and improvements that could be promoted on an EU Level.

* The Belgian Class Action Bill was adopted by the Belgian Parliament on the 13th of March 2014. Please click on the [link](#) to see the full text .

The connection between Maritime Arbitration and International Commercial Arbitration

by Daniel Morgado

Historically the Sea has been a place where key elements of economic relationships have been created. Consequently, the maritime industry is a vital component of the global economy. Nowadays an enormous percentage of the world's trade goods are transported by ships or vessels.

In light of this, maritime arbitration has been a useful mechanism for the settlement of disputes for many decades. Arbitration recognizes the importance of maritime disputes in the business world. It focuses on offering a service which integrates: speed, cost effectiveness, confidentiality and flexibility.

Each session is moderated by members of the FMB working group, currently composed of Benoit SIMPELAERE, Bernard CASTELAIN, Ivan VEROUGSTRAETE, Jef MOSTINCKX, Johan BILLIET, Philippe BILLIET, Willem MEUWISSEN and Barbara GAYSE representative of the Federale Bemiddelingscommissie- Commission Fédérale de Médiation.

The Brainstorming event which was held on 27/06/2013 in the Brussels Palace of Justice, resulted in the first FMB report. The FMB meeting held on the 10th of February 2014 at the Institute for European Studies (IES), resulted in the second FMB report. Both reports are available via our [website](#).

To read the first FMB report [click here](#).

To read the second FMB report [click here](#).

The FMB project was created with the support of AIA IVZW (www.arbitration-adr.org).

For those interested in joining or sponsoring the Initiative, please send an email to the [AIA team!](#)

Feature: AIA Gold Sponsor Billiet & Co



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4 Day Seminar on Investment Arbitration Brussels Diplomatic Academy

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.

In this context, there is a very close relationship between international commercial arbitration and maritime arbitration. From the beginning of time, the maritime industry and commerce have been intertwined. In the dispute resolution field however, they work independently.

Before identifying the differences, it is useful to note that there are similarities between Maritime Arbitration and International Commercial Arbitration. Both of them want to solve disputes between particular parties, they do that outside of the jurisdiction of the national court, the award is rendered by an arbitrator appointed by the parties and both institutions recognize the New York Convention as a basic pillar to give validity and recognition to international awards.

On the other hand, the most important differences between maritime and commercial arbitration are twofold. Firstly, Maritime arbitration has a very international nature and secondly there are specific features of the members of the maritime industry which cannot be seen elsewhere.

The international character of Maritime dispute resolution is exhibited all the time, because when a vessel leaves the pier and enters international waters, it is subject to a mixture of laws, treaties, U.N. codes, and international law principles, but most significantly, it is subject to forces of nature and the unquestioned authority of the Master or Captain. In other words, it has its own rules and usually they are grouped through associations which are relevant in this field. Those institutions organize this maritime community by accomplishing basic agreements with the aim of creating a network among people in the maritime industry. The most famous institutions are: The Society of Maritime Arbitrators ("SMA" from New York), London Maritime Arbitrators Association ("LMAA"), Chambre Arbitrale Maritime de Paris ("CAMP") and China Maritime Arbitration Commission ("CMAC").

This international character is also confirmed by the definition of High Seas or more commonly known as International waters. Under Part VII of the United Nations Convention on the Law of the Sea (UNCLOS) the 'High Seas' are defined as the open ocean lying beyond the 200 nautical mile Exclusive Economic Zones (EEZ) of coastal States and cover about 50% of the earth's surface (Steve Raaymakers, International Workshop on Governance of High Seas Biodiversity Conservation, June 2003, Cairns, [Australia](#)). Therefore, the Maritime industry develops its activities in a part of the world where local legislation is not built under a national legislation mechanism. It means that they are not so worried about legal issues, formal procedural protections and even due process requirements; because they know that an accurate award should be made in a complex scenario, where law is not the most important issue.

Due to its international character, the seat of arbitration has a lot of importance, because at the end of the arbitration, it will be local courts which will decide on the enforcement and recognition of the award. For example, New York City is a famous seat of Maritime Arbitration, and this is not a coincidence because national courts have had a pro arbitration attitude for some time -which is a basic factor in becoming a centre of maritime dispute Resolution. Fundamentally, this position was confirmed in 1983 in the case of *Bergesen v. Joseph Muller Corp*, 710 F.2d 928 (2nd Cir. 1983).

This illustrated an opportunity where the Court of Appeal of the second Circuit made a right interpretation of the New York Convention. The court stated that they had right to enforce an award rendered in New York City although it was a dispute where only foreign parties were involved. Later, the same court confirmed that idea through

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

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- 100 words of company information in AIA Network Booklet and on website under Sponsorship Partners tab, title: 'AIA Bronze Partners'
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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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establishment of a high standard to set aside an award rendered in a maritime dispute, which is the requirement of acting in "manifest disregard of the law" (Halligan v. Piper Jaffray, Inc., 148 F.3d 197, 202 (2nd Cir. 1998)).

The second characteristic of the maritime industry is the difference in comparison to other commercial activities. The maritime community focuses its attention on the knowledge of maritime operations. They don't like alien people inside their fraternal community. They prefer specialists in maritime matters rather than specialists in international law.

The higher degree of specialization of Maritime Arbitration means that the technical knowledge is more important than legal skills. In other words, the parties are looking for arbitrators who know about the maritime industry in detail. For them, it is important that the result of the dispute should be rendered by people who know what is fair for the parties. Consequently, the actors of the maritime industry are not very focused on legal matters like due process or procedural formalities.

However, that does not mean that they are not interested in obtaining a fair award- that is why the Associations of Maritime Arbitration are trying to convince their users that they can guarantee the arbitrators neutrality.

The question that one must ask when considering these elements is: Is it necessary to have unification of International Commercial Arbitration and Maritime Arbitration? One could argue that the answer should be no. They ought to learn from one another. Maritime Arbitration has the task of opening its activities in order to avoid its isolated condition and to offer services not limited to big companies.

China is having a dramatically increasing hold on the maritime market. Indeed, changes were made in legislation and now, it has become a very attractive seat for many maritime disputes. This is an important issue for China as a massive user of maritime dispute resolution.

On the other hand, International commercial arbitration can take notes on the international character of Maritime Arbitration and the higher degree of specialization of the arbitrators; because both characteristics could help to improve the offers which are available to the users of international commercial arbitration through the conciliation of the legal framework and the complexity of a specific industry.

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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.
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- 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.

AIA Media Partner and Supporter of the KLRCA International Arbitration Conference



On the 19th-21st of June 2014, the Kuala Lumpur Regional Centre for Arbitration (KLRCA) will host its International Arbitration Conference in Kuching, Sarawak.

The event will feature eminent arbitration experts from across the globe to deliberate the foundations of arbitration, scrutinize the current state of the practice and form a road map for the future in line with the theme:

"Reflecting the Past, Building the Future".

The conference expects to attract over 400 delegates from all over the world and is set to have a critical look at core issues by eminent experts in international arbitration.

There is complimentary entry to the Rain forest World Music Festival. For more information on attending this event, please visit the KLRCA [website](#).

AIA Media Partner and Supporter of the 3rd DIS Baltic Arbitration Days 2014

The event will take place on Thursday 26th and Friday 27th of June in Riga's Graduate School of Law, Latvia. Business Executives, In-house counsel, dispute resolution practitioners, arbitrators, contract negotiators, attorneys in law firms, academics and students are recommended to attend.

International Enforcement of Arbitral Awards, Arbitration in Transport and Shipping Related Disputes will be examined.

For more information contact Ms. Indra Simsons at indra.simsone@bnt.eu or call +371 67 77 05 04



AIA Recommends

Transnational Dispute Management (TDM, ISSN 1875-4120) is a comprehensive and innovative information service on the management of international disputes, with a focus on the rapidly evolving area of investment arbitration, but also in other significant areas of international investment (such as oil, gas, energy, infrastructure,

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