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AIA Upcoming Events:

Conference on Online Dispute Resolution (ODR)

LOCATION: Institute for European Studies, Pleinlaan 5/ bld. de la Plaine 'Rome room', 1050 Brussels , Belgium

DATE: September 18th, 2013 from 2-5 pm followed by networking drinks
To register and for more information visit our website

<http://arbitration-adr.org/activities/>

European Mediation Training for Practitioners of Justice

LOCATION: HUB Campus Brussels, Belgium

DATE: August 19th-31st, 2013

Limited number of places left!

For details please refer to the EMTPJ website

www.emtpj.eu

Conference on Online Dispute Resolution (ODR) for
Cross-Border E-Commerce Transactions

We invite you to attend our conference on the 18th of September at the Institute for European Studies. Speakers from the Commission, the European Parliament and **BEUC (the consumer's organisation) will be present and will take the floor.**

The driving force for the creation and development of ODR (Online Dispute Resolution) schemes has always been commerce. The Internet has been recognized worldwide as a commercial trading platform where people increasingly conduct their commercial transactions.

More specifically, EU legislation will constitute an essential element of this analysis; the new Regulation No 524/2013 of the European Parliament and of the Council of the 21st of May 2013 on online dispute resolution for consumer disputes and the new Directive 2013/11/EU of the European Parliament and of the Council of the 21st of May 2013 on alternative dispute resolution for consumer disputes and the respective changes in ODR will be addressed. These legal instruments aim at ensuring that consumers can have recourse to a simple, expeditious and low-cost online dispute resolution method.

The UNCITRAL's draft procedural rules for online dispute resolution for cross-border electronic transactions will also be discussed. According to the Report of the UNCITRAL's Working Group III concerning ODR, the Rules will mainly aim at disputes arising out of consumer-to-consumer transactions. It is disputed whether an arbitration stage will be included in ODR schemes or not.

Furthermore, a thorough analysis will be conducted, concerning the consumer's point of view and perspective and the respective implications of the above-mentioned legislation upon e-commerce transactions.

For more information please visit our website and fill in our registration form
<http://www.arbitration-adr.org/activities/?p=conference&a=upcoming#46>

We look forward to seeing you on the 18th of September!

IMI accreditation announcement



The AIA is pleased to announce that we now have a Qualifying Assessment Program (QAP) approved by the International Mediation Institute (IMI).

IMI is unique as it is the only organization in the world to cultivate global, professional standards for experienced mediators, advocates and others involved in the field of ADR. In addition, IMI convenes stakeholders, promotes understanding and disseminates skills all in a non-service provider capacity.

Establishing the European Mediation Training for Practitioners of Justice (EMTPJ) represented an important milestone for mediation as it allows participants to apply for accreditation in numerous jurisdictions both within and outside Europe thereby creating truly 'European Mediators'. The AIA offers the assessment in different languages after agreement between the AIA and the candidate.

Since then, it has become increasingly important for the AIA to obtain IMI approval in order to have an assessment recognized on a global scale that would cater to experienced, competent mediators, with the overall aim of promoting mediation as a profession.

Those who take part in the AIA's qualifying assessment program and successfully become qualified and then IMI Certified will form part of a worldwide community of experienced mediators who's Profiles are freely searchable by users through the IMI open search engine. The assessment will take place on September 1st, 2013.

AIA is now open for registrations; applicants must have 200 hours mediation experience and 20 mediation cases. For details please email us at: IMIQAAP@arbitration-adr.org

AIA also supports the Young Mediators Initiative (YMI), which was established under the umbrella of IMI, with the aim of encouraging, connecting and assisting young mediators worldwide.

Oxford Health Plans v. Sutter: Arbitration and Class Proceedings at the United States Supreme Court

by Paul Frankenstein

In its most recent term, the United States Supreme Court was once more faced with addressing the interplay of class-action litigation and arbitration. *Oxford Health Plans LLC v. Sutter* ("Oxford Health Plans") seemed to ask the Court to determine whether language in an arbitration clause that

does not specifically mention class arbitration can be construed as authorization for class arbitration.

In *Oxford Health Plans*, Dr. John Sutter, acting as lead plaintiff for a class of more than 16,000 doctors, filed a class-action lawsuit in New Jersey state court, alleging that Oxford Health Plans had improperly delayed payments, downgraded claims, and denied payment on procedures by bundling them with other procedures.

Oxford filed a motion to dismiss, citing an arbitration clause in their standard agreement that read in part, "No civil action concerning any dispute arising under this agreement shall be instituted before any court, and all such disputes shall be submitted to final and binding arbitration in New Jersey, pursuant to the Rules of the American Arbitration Association with one arbitrator." The New Jersey state trial court ruled in favor of Oxford's motion to dismiss, and referred the case to arbitration.

Once in arbitration, Dr. Sutter argued that the arbitration should proceed as a class proceeding; Oxford opposed that argument. The sole arbitrator, in a carefully drafted partial decision, found that he could not order class arbitration without the consent of the parties; however, he concluded that the parties had, in fact, consented to class arbitration in the arbitration clause.

The arbitrator's logic was fairly straightforward: the arbitration clause prohibited any civil action in a court of law, and instead, vested arbitration with jurisdiction over all civil actions. As a class-action lawsuit is plainly a type of civil action, and all civil actions must be brought in front of an arbitrator, then, under the terms of the arbitration clause, a class-action proceeding can be brought in front of an arbitrator.

Oxford appealed the partial decision to the federal district court, which refused to overturn the partial decision. A few years later, in 2010, Oxford asked the arbitrator to reconsider his earlier decision in light of *Stolt-Nielsen S.A. v. Animal-Feeds International Corp.*, 130 S.Ct. 1758 (2010), a case where the U.S. Supreme Court held that the Federal Arbitration Act ("FAA") mandates that class arbitration requires clear authorization from the parties.

The arbitrator did so, and again concluded that the arbitration clause allowed for class arbitration. Oxford then again returned to district court, which again declined to overturn the arbitrator's decision. Oxford subsequently appealed to the US Third Circuit, which upheld the lower court's ruling. After losing at the Third Circuit, Oxford appealed to the Supreme Court, which granted certiorari in December 2012.

It should be noted that Oxford had originally wanted to take the dispute to arbitration, but once actually in arbitration and finding itself displeased with the arbitrator's rulings, Oxford then attempted to use the courts to avoid the consequences of going to arbitration.



This case, like its predecessor *Stolt-Nielsen*, potentially raised a number of interesting issues relating to the gate-keeper role of the courts and the role the courts play in reviewing awards. For example, while courts give arbitrators a great deal of deference when reviewing awards on factual and legal findings of substance, how much deference should they give when looking at whether or not the arbitrators exceeded their mandate? Will courts be required to make a finding on whether or not an arbitration clause permits class arbitration prior to referring a matter to arbitration? How broadly should imprecisely worded clauses be interpreted?

The Court, in a slightly surprising 9-0 decision written by Justice Kagen, chose not to address those issues. Instead, it made the observation that "under §10(a)(4) [of the FAA], the question for a judge is not whether the arbitrator construed the parties' contract correctly, but whether he construed it at all," and thus found that the courts, in this case, lack the power to review the arbitrator's finding on class arbitration at all.

The Court distinguished *Oxford Health Plans* from *Stolt-Nielsen* by noting that in *Stolt-Nielsen*, the parties agreed that the underlying contract lacked any authorization for class arbitration, while in the current case, not only did the parties disagree as to the scope of the arbitration clause, the parties had explicitly submitted the question of whether or not class arbitration was allowable under the contract to the arbitrator. Moreover, the question of class arbitration had been submitted to the arbitrator not once, but twice.

Under these facts, the courts cannot review the arbitrator's decision on class arbitration, as the arbitrator did not exceed the powers granted him by the parties. It is not the place of the courts to reach into arbitration awards and review issues of law or fact; rather, the FAA only allows "courts to vacate an arbitral decision only when the arbitrator strayed from his delegated task of interpreting a contract, not when he performed that task poorly."

Thus, while the court found that the arbitral panel in *Stolt-Nielsen* went outside the ambit of their authority, the arbitrator in this case quite clearly stayed within the assigned task of interpreting the contract.

The decision did note that there were other procedural challenges that Oxford might have mounted that may or may not have met with greater favor from the courts; for example, had Oxford contended that the question of class arbitration was a "so-called 'question of arbitrability'", the courts may have had the opportunity to review the question *de novo* under *Green Tree Financial Corp. v. Bazzle*, 539 U. S. 444, 452 (2003). But as Oxford failed to do so, it limited its options in the court system.

This decision underscores the fact that under the FAA, courts have very limited review powers when it comes to arbitrators' decisions. Only if the award or decision falls under a few clearly delineated areas that are presumptively for the courts to decide, or if the arbitrators clearly went

beyond the task that was asked of them, can a court vacate an arbitration award.

The decision also more clearly outlines the jurisprudence of the *Stolt-Nielsen* decision, noting that *Stolt-Nielsen* is not an clear bar to class arbitration, but rather discusses the limits of the powers of the arbitrators. Specifically, under *Stolt-Nielsen*, arbitrators cannot order class arbitration when it is agreed that there is no contractual basis for class arbitration; this was clearly not the case in *Oxford Health Plans*, as one party was seeking class arbitration under the terms of the contract.

Justice Alito joined the majority but also wrote a concurring opinion where he explained, in his view, that the arbitrator's reasoning was fatally flawed and that if the actual issue of class arbitration had come before the court, he would have vacated the arbitrator's decision. Justice Alito's concurrence was joined by Justice Thomas.

The Group Iftar of the AIA Mentoring Program in Egypt

On Friday the 26th of July, the AIA mentoring program in Egypt organised a group Iftar for the Program Mentors and fellows. The Iftar is the main meal Muslims take in Ramadan after sunset.

This Iftar was hosted by the Youth Parliament, a division of the Egyptian Ministry of Youth, at the Youth Center of "Meet -Abo-Ghaleb". This proved to be a good opportunity for members of the AIA Mentoring Program to come together and get to know each other.



Mahmoud Soliman, a fellow of the AIA Mentoring Program and a coordinator at the Egyptian ministry of youth and Medhat El-Banna, the Head of the AIA representative office in Egypt, were the chief organizers of the event.

This gathering came as a part of the AIA's social duty towards the communities in which it operates and illustrates that ADR is open to all.



Does the Transparency Movement Finally Foster Investment Arbitration?

by Christina Gavriilidou

Confidentiality and arbitration are two terms that are usually mentioned in conjunction with one another. This is increasingly the case in investment arbitration. Fundamentally, confidentiality has been said to be the most prominent and disputed element of international commercial arbitration and is considered the driving force for disputing parties when it comes to choosing arbitration as a dispute resolution method.

While there is a broad consensus as far as the private nature of arbitration is concerned, there is little compromise as to the issue of confidentiality and whether there is a general obligation or duty to keep the arbitral proceedings and their contents confidential.

In investment arbitration, we have a State – party on the one hand, and an investor on the other hand meaning that sovereigns are involved. The inevitable consequence of this is an increased need for transparency, taking into account the constant awareness of the public as regards various cases in investment arbitration.

Although this is well understood, in cases where there is a State – party involved, the public interest is obviously much higher regarding acts or sanctions on the State concerned. Ultimately, the prospective outcome of the dispute will most likely have an impact on the citizen's, economy and budget of that State.

The ability of a State to make use of its superior governmental power with the view to eliminate a foreign investor's rights is the crucial element that distinguishes investment arbitration from commercial arbitration and that fact justifies the public interest deriving from the use of this State power.

The much debated concept of transparency is very closely connected with some opinions expressed upon the legitimacy of arbitration as a dispute resolution method in investment cases. Many prominent NGOs have emphasized the need for greater transparency but also stated their grievances on the respective limitations of NGOs involvement in the proceedings.

Much criticism exists with regard to the powers of an arbitral tribunal to adjudicate a private dispute that concerns issues of a State's regulatory authority. The legitimacy of the arbitral process has been widely disputed. This issue should be seen in connection with the issue of arbitrability; whether an arbitral tribunal has competence to rule on a dispute when a party argues that public policy concerns are involved and in consequence, the tribunal's powers are diminished or restricted.

The arbitration community and several NGOs seem to have replaced the arbitrability issue with the uncertain notion of transparency. If the arbitrability issue were to be defined in investment treaties with certain accuracy, then problems arising from the vague notion of transparency and its respective implementation into the arbitral process could be eliminated (Teitelbaum, R. (2010), *A look At The Public Interest In Investment Arbitration: Is It Unique? What Should We Do About It?*)

Furthermore, some other issues create some difficulties concerning the fostering of transparency in investment arbitration. First and foremost, it must be stated that the arbitration agreement is a private agreement between the parties who have given their consent to arbitrate and thus, the structure and the whole procedure in general is fully controlled by them.

As an inevitable consequence, the participation of non-signatories to the arbitration is restricted to what the parties have agreed and consented to. Second, one major problem regarding the participation of non - disputing parties in the proceedings is the absence of common, precise and clear standards that regulate the admission of such requests for participation.

Third, by allowing the participation of non-signatories to the arbitration, one can assume that the risk of arbitration resembling time consuming court litigation is forthcoming. For this to be avoided, the admissions of requests for participation of third parties to arbitration should be limited and also in the light of some kind of contribution to the resolution of the case, always subject to the necessary protection of genuine commercial secrets.

In the last decade, a number of NGOs have managed to penetrate the 'wall of confidentiality' in investment arbitration, infusing a public smack in the proceedings in general. As explained by the tribunal in the Suez amicus order:

"The traditional role of an amicus in an adversary proceedings is to help the decision maker to arrive at its decision by providing the decision maker with arguments, perspective and expertise that litigating parties may not provide"(Zachariasiewicz, M. (2012) 'Amicus Curiae in International Investment Arbitration: Can It Enhance the Transparency of Investment Dispute Resolution?', *Journal of International Arbitration*, Kluwer Law International 2012, Vol. 29, Issue 2, pp. 205–224).

Amici curiae often represent civil society groups and their interests and thus, they seem to be a contributing factor to enhanced transparency and democratic legitimacy of the whole process in investment arbitration in general and under investment treaties as well. A very famous case is the *Methanex* case as it was the first modern case which admitted the participation of a non-disputing party in arbitration proceedings between an investor and a State.

A highly controversial issue but yet crucial is, on the one hand, whether the interest of the parties to confidentiality is a real interest and, on the other, whether transparency is a real need. It appears that these are two different terms which extinguish each other, although the reality is that a settlement needs to be reached between confidentiality and transparency so as to achieve a certain degree of balance.

The long lasting debate over confidentiality and transparency in arbitration proceedings, beyond the higher public interest in investor-State arbitration, is also connected with the improvement of arbitration in general and with the issue of predictability and consistency of the jurisprudence.

As far as recent developments concerning the UNCITRAL Working Group's report on the new transparency rules are



concerned, these rules reflect the growing worldwide interest in fostering transparency in investor-state arbitration. With the initiative of the UNCITRAL Commission, the Working Group II was instructed to address transparency especially in the field of treaty-based investor-state arbitration “*as a matter of priority immediately after completion of the current revision of the UNCITRAL Arbitration Rules*” (Bergman, N. (2012), “*Seeking to Ensure Transparency: UNCITRAL Working Group II’ Work on Transparency in Treaty-Based Investor-State Arbitration*”, in Kluwer Arbitration Blog).

An important issue facing the Working Group concerning the draft rules is the promotion of their applicability under existing and future treaties. The majority view on applicability was the following: regarding future treaties “*a reference to the UNCITRAL Arbitration Rules would (presumptively) include a reference to the rules on transparency unless the States Parties agreed otherwise*” by for instance choosing to apply an earlier version of the UNCITRAL Arbitration Rules; with respect to existing treaties, the majority view was that “*the rules on transparency would only apply where the parties had expressly consented thereto, with wording being used to make it clear that there could be no dynamic interpretation of existing investment treaties which would make the transparency rules applicable to them.*”

The UNCITRAL transparency rules entail provisions on the publication of documents (draft Art. 3), publication of arbitral awards (draft Art. 4), *amicus curiae* submissions (draft Art. 5) etc. constituting a great and meaningful development in transparency for investor-state arbitration, through the United Nations’ principal organ for promoting the use of international arbitration to resolve disputes.

Generally, the transparency movement seems to be instigated more from a political need to review the role of investment arbitral tribunals than an alleged legal need. Even under the new transparency provisions, there is no evidence or legal certainty that investment arbitrations are being conducted in a more fair, expeditious or effective way. It is of primary significance to emphasize the principal role of this transparency ‘*tide*’ which applies first and foremost to investor-state disputes, letting general commercial arbitration operate mostly under its traditional rules and principles.

Book Review: International Antitrust Litigation – Conflicts of Laws and Coordination

by Christina Gavriilidou



Antitrust proceedings have increasingly obtained an international character especially due to the fact that antitrust law enforcement across Europe has been decentralized and the number of the respective competition authorities involved in such proceedings, whether administrative or judicial, has increased.

The complexity of the issue at hand has brought together experts, academics, private practice and policy making people and this fruitful attempt led to a research project, funded by the European Commission.

The book is edited by Jürgen Basedow; Director of Max

Planck Institute for Comparative and International Private Law, Hamburg, also a Professor at the University of Hamburg and former chairman of the German Monopolies Commission, Stéphanie Francq who is a Professor and Chair of European Law at the Catholic University of Louvain and Laurence Idot who is Professor at the University Paris II Panthéon-Assas and member of the Board of the French Competition Authority.

Antitrust infringements showing similar patterns and the respective judicial or administrative authorities taking actions against them is very likely to involve various countries due to the internalization of antitrust proceedings. The book analyses in depth the complexity of the situation and tries to demonstrate possible solutions regarding rules on jurisdiction, applicable law, recognition of decisions etc.

PIL at this point is very much related with this issue while its rules and techniques are especially designed for the purpose of resolving international disputes arising from private relationships. The book tries to link the international nature of antitrust litigation with the rules of PIL.

The book takes a comparative view with regard to the effectiveness of the existing EU legal instruments. The 16 chapters span the respective provisions of the Brussels I and Rome I and II Regulations, the co-operation mechanisms provided for by Regulation 1/2003 and some aspects of US procedural law.

Thus, the book constitutes a good read for lawyers, academics, students and even businesses that are frequently dealing with antitrust issues within the international realm.

For more information, you can visit the website of Hart Publishing: <http://www.hartpub.co.uk/BookDetails.aspx?ISBN=9781849460392>

2013 Country update: Russia

by Tatiana Proshkina

A number of remarkable developments in recent case law have occurred since the beginning of 2013. Moreover, important changes to Russia’s arbitration regime are expected in the near future, following the President’s instruction in the annual Presidential Address to the Federal Assembly delivered last December. Mr. Putin specified that “it is imperative to come up with a set of measures to develop arbitration proceedings in Russia at a qualitatively new level”. This article outlines some of the most relevant developments and proposals to date.

The Ministry of Justice and the Ministry of Economic Development propose a number of changes concerning arbitration, including the introduction of civil and criminal liability for arbitrators

Currently, the Ministry of Justice of the Russian Federation is working on a draft bill. The final draft is expected in the second half of this year. However, the Ministry has already published the report summarising the proposed measures that will affect both domes-



tic and international commercial arbitration, as well as the law on arbitral institutions. One of the most notable suggestions is to subject arbitrators and arbitral institutions to civil liability for failure to perform or improper performance of their functions and to criminal liability for crimes related to arbitration proceedings, in particular, for offering or accepting bribes or issuing "fake" awards.

Immunity is previewed only from civil liability for arbitrators who have made unjust decision or unintentional mistakes. Crucially, there is no express provision governing the bribery of an arbitrator. Current anti-bribery law refers only to bribery of an "official". Members of the arbitration and business community are quite sceptical regarding the introduction of civil liability for arbitrators. In their view, it will not contribute to the attraction of international arbitrators toward Russia.

Arbitral immunity is a well-established principle. This principle limits the opportunity to hold an arbitrator personally liable and sue him for damages. However, the extent of an arbitrator's immunity from liability varies then from country to country. In short, on the one hand, arbitrators enjoy absolute immunity. For example, the USA follow this approach. Also, the Rules of the ICC, the LCIA and the AAA exclude arbitrators from liability. However, most commonly, arbitrators enjoy limited immunity.

The English Arbitration Act 1996 limits the immunity to acts and decisions taken in bad faith. According to French law, the arbitrator remains liable for fraud, gross negligence and wilful misconduct. At the same time, England and France are among the most popular countries for arbitrations.

Apart from liability, the Ministry proposes the following: to introduce minimal qualification requirements for arbitrators; to allow retired judges to act as arbitrators; to provide harmonised requirements for arbitral institutions in order to prevent the creation of the so called 'pocket arbitration courts', in particular, to provide that permanent arbitration institutions shall be set up as non-commercial partnerships; to introduce a provision allowing parties to agree that a court may review an award on the merits (to section 69 of the English Arbitration Act 1996) and to clarify what types of disputes are arbitrable in Russia.

A reference to arbitration rules is sufficient to make an arbitration clause enforceable

On July 16th 2013, the Presidium of the Supreme Commercial Court changed the practice regarding interpretation of the arbitration clauses. In *Avtosped Internationale Speditions GmbH vs. Bosh Termotechnic LLC* (case no. A27-7409/2011), the Court confirmed that an arbitration clause which consists of a reference to a set of arbitration rules is enforceable. The Judge reporting to the Presidium explained that the parties used an arbitration clause which is recommended by the ICC itself with only small deviations.

All lower courts found that the arbitration clause was not specific enough to establish the true intent of the parties regarding the dispute resolution body. Last year, the Federal Commercial Court for the Moscow Circuit found that a reference to the Russian ICAC Rules shall be interpreted as providing for *ad hoc* arbitration and not for an arbitration administered by the ICAC (case no. A40-29251/11-68-256). That is why this is an important clarification for practitioners. The final text of the Presidium's decision that will be pub-

lished soon is expected to illustrate the limits of permissible inaccuracies in the wording of arbitration clauses.

Application of public policy defence

On April 1st 2013, the Presidium of the Supreme Commercial Court published an information letter summarising the practice of the application of the public policy defence in enforcement proceedings of foreign arbitral awards and court judgements (Information Letter of the Presidium of the Russian Federation dated 26.02.2013 № 156).

While an information letter is not binding, lower courts take into account views of the Presidium. The most positive effect of this letter is that the Court reiterated that the public policy defence shall be interpreted narrowly and it listed scenarios in which Russian public policy is not breached. Furthermore, the party invoking the public policy ground bears the burden of proof. In short, the most relevant conclusions from the letter are that:

1. The public policy defence will not prevent the enforcement of an award of compounded interest or liquidated damages, unless it has been demonstrated that they are punitive in nature;
2. a foreign arbitral award may be enforced despite objections by the debtor's spouse, who was not a party to the arbitration and who argued that the award infringes her rights because the amount awarded ought to have been recovered from, among other things, the spouses' matrimonial property;
3. recognition and enforcement of the award does not violate public policy if an arbitrator discloses circumstances that may affect his independence and impartiality but none of the parties files an application for disqualification of that arbitrator. At the same time, if such an application for disqualification of the arbitrator is filed but not granted, public policy defence may serve as a ground for denial of recognition and enforcement of the foreign arbitral award;
4. an award enforcing a contract procured by corruption is contrary to public policy.

Launch of Russian Arbitration Association

In May 2013, the Russian Arbitration Association was officially registered at the Russian Federation's Ministry of Justice. The ultimate purposes of Association are: the promotion of arbitration in Russia and the elimination of the general suspicious attitude shown in the past towards arbitration as an efficient dispute resolution tool.

One of the goals is to create an arbitral authority for administering international and Russian domestic disputes on the basis of the UNCITRAL Arbitration Rules. In particular, it aims to assist the parties with the constitution of an arbitral tribunal, consider challenges against arbitrators and administer the financial part.

Besides that, the Association will formulate proposals to legislative authorities on the development of arbitration in Russia and improvement of its legal environment. The number of law firms and legal professionals supporting the development of the Association is already close to a hundred.



A Comment on the Use of Administrative Secretaries in Arbitration : The Fourth Arbitrator No More?

By Olivia Staines

The ICC's revised Note on the Appointment, Duties and Remuneration of Administrative secretaries released in August 2012, has sparked discussions on the role of administrative secretaries in the arbitration process. Recently Menz, George and Wittmer published an article on the subject in which they described the role of the administrative secretary as lying somewhere between Miss Money-penny (James Bond) and d'Artagnan (the fourth musketeer).

This is both a refreshing and interesting appraisal. Miss Money-penny is supposedly the tight laced and dedicated assistant, whilst d'Artagnan is the courageous aide to the three musketeers who does most of the footwork and ultimately ends up as front-runner.

However, the wording of the ICC Note is far less fanciful. When it comes to their appointment, administrative secretaries are to be held to the same standards of independence and impartiality as arbitrators and won't be appointed if a party has raised an objection.

Fundamentally, secretaries are to act under the Arbitral Tribunal's strict instruction, supervision and responsibility. Their tasks are to involve transmission, organization and proofreading of documents and files. They are to conduct research and take minutes in hearings and meetings.

The revised Note therefore clearly fashions more of a Miss Money-penny character than a bold d'Artagnan, who people essentially rely on as the fourth arbitrator to the proceedings. Thus, the Arbitral Tribunal can only look to the administrative secretary for assistance and may not under any circumstances delegate decision making functions or essential duties.

Consequently, just because the administrative secretary has prepared notes/ memoranda, doesn't mean to say that the Arbitral Tribunal is released from having to review the file or draft the decision. After all, arbitration is first and foremost a voluntary process, through which the parties elect the arbitrator (s) and rely on them to reach a justifiable decision on their own.

However, the Queen Mary Survey 2012 highlights that in reality, administrative secretaries have been used by both common law and civil law arbitrators for non-administrative duties. The risk of doing this is outlined in the New York Convention Article V(d). This stipulates that if the composition of the arbitral authority or procedure is not in accordance with the agreement of the parties then recognition and enforcement of the award may be refused. This is a serious consequence, the implications of which should not be underestimated.

The JAMS (Judicial Arbitration and Mediation Services) Guidelines for the use of Clerks in Arbitrations (2012) make an interesting juxtaposition to the ICC Note.

The former are less ceremonial and prescribed than the latter. For example, the parties don't have the same prerogative to merely object to the appointment of a clerk. In addition, the Guidelines require the tribunal to clearly unveil the duties of the clerk: 'eg „research and/ or drafting'. Crucially, unlike the ICC Note, the JAMS Guidelines impose no further limits or restrictions on the arbitrators' use of clerks in the arbitration process.

In conclusion, although Menz, George and Wittmer argue that the most critical of arbitrator qualities is good judgment in the aforementioned scenario; this is not necessarily the case. A sense of responsibility and duty should override good judgment when it comes to resolving disputes. Abdicating core non administrative tasks to Miss Money-penny so she assumes d'Artagnans' fight should never be an option.

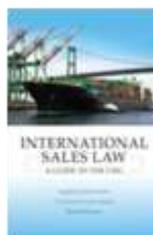
In light of this, rather than just increasing transparency, it is necessary to go right to the heart of the problem. The obvious issue is the sheer volume of files which become increasingly hard to manage whether an arbitrator has significant help from a secretary or not.

If having restrictions put in place to ensure the sizing down of files thereby having a more manageable workload is not an option because, as some critics suggest, 'all information is relevant and we can't cut corners', then creating a new position/title could be a solution.

This would mean that someone other than the secretary would help arbitrators to manage *certain measurable* and *limited* non administrative tasks in clearly defined circumstances. It is this point which needs to be contemplated and addressed if efficiency is the aim of the game.

Book Review: International Sales Law – A Guide to the CISG

by Christina Gavriilidou



One of the most successful creations of UNCITRAL - the CISG (Convention on Contracts for the International Sale of Goods) - considered to be the "world's sales law" has been ratified by 78 Contracting States which amounts to more than 80% of the global trade and production of goods.

Ingeborg Schwenzer, a German jurist and Professor for private and comparative law at the University of Basel, Christiana Fountoulakis, a Professor in Fribourg University and Mariel Dimsey, consultant to ICC, have published the second edition of International Sales Law – A Guide to the CISG.

It is a very useful casebook for international trade lawyers, practitioners and students who can use it as a starting point for learning about the CISG as it contains an article-by-article analysis of the Convention.



The book also entails a broad list of cases of primary significance in order to help the reader to focus on crucial features concerning the CISG.

The book stresses the need and the importance of the uniform application of the CISG as an international sales law. This is quite a difficult goal to achieve globally, given the number of the Contracting States and the volume of case law demonstrated in this book.

The success of the CISG as an international legal instrument lies in the fact that many domestic laws have used it as a model. It is also surprising that the CISG has been used as a model for the drafting of regional and international principles as well, such as the PICC (Principles for International Commercial Contracts) drafted by UNIDROIT.

The book emphasizes the importance of the CISG as an international sales law which respects the idiosyncrasies of local laws and offers a certain, uniform and consistent framework within which Contracting States can define the scope and obligations of international sales contracts.

You can find more information on the Hart Publishing website:

<http://www.hartpub.co.uk/Search.aspx?Type=2&Text=international%20sales%20law>

AIA Recommends to Attend

Seminar on International Commercial Arbitration



We invite you to attend a seminar organized by the Association for International Arbitration (AIA) in Belgium, together with the Ministry of Industry & Commerce and GICO on the topic: 'Overview of the main arbitration institutions in Europe and their practices', scheduled for the 4th to the 5th of September 2013, at the Crowne Plaza Hotel - Manama - Kingdom of Bahrain.

The main objective of this seminar is to establish and develop a truly global network of arbitrators, legal experts, academics, researchers and students specialized in the field of arbitration and to encourage the use of arbitration and other effective and appropriate means of ADR on domestic, European and international levels. Topics of discussion include the commencement of arbitration, arbitration proceedings, the arbitral tribunal, the arbitral award and finally costs and other provisions.

To Register & For more info, please contact Jonna: Tel: + 9 7 3 - 1 3 6 7 0 7 0 6 , F a x : + 9 7 3 1 7 9 1 1 3 1 0 , E m a i l : Jonna@gulfico.com

European Mediation Training for Practitioners of Justice

This course allows participants to become a mediator specialised in civil and commercial cross border matters and develops all the necessary skills required to start up a mediation practice. Participants can be experienced mediators or beginners .

The course is comprised of 100-hours of training over 11

days . It covers both theory and practice and culminates in an assessment day at the end of the pro-gram.

Classes are conducted in English and are recognized by the Belgian Federal Mediation Commission and by 17 mediation providers in and beyond Europe.

For those who would like to follow some aspects of the EMTPJ course but not every-thing, we now offer EMTPJ *continuous hours* which allow participants to pick and choose classes.

These include: Conflict theory and mediation, theory and practice of contract law in Europe, analytical study of conflict resolution methods, International mediation, EU ethics in Mediation, theory and practice of EU law and mediation acts, interventions in specific situations, the function of party-experts and party counsel in civil and commercial mediation.

The EMTPJ's closing networking drinks on the 31st of August are open to those who would like to take this opportunity to meet and exchange with practitioners working in the field of ADR.

For more details on the EMTPJ course please contact: administration@arbitration-adr.org.

For more information about the EMTPJ program, schedule, lecturers and to register for the course please visit the EMTPJ website www.emtpj.eu

Limited places available so register now!

Postgraduate in International Business Arbitration

The Department of Law at VUB University Brussels, together with the Association for International Arbitration give the opportunity to participants to gain knowledge in international commercial arbitration and other forms of alternative dispute resolution such as mediation, negotiation and conciliation.

For more information about admissions please follow the link below:

<http://www.vub.ac.be/iPAVUB/Postgraduaten/Resources/InternationalBusinessArbitration.pdf>

Mastering the Challenges in International Arbitration

The AIA will collaborate with the ICAL (International commercial Arbitration Law LLM) Program and Alumni Association and contribute as a media supporter to their Anniversary Conference from the 29th-30th of August 2013 at the Grand Hôtel, Stockholm, Sweden. Thursday 29th of August 2013: 1st module: Mastering issues of public interests in private disputes. Friday 30th of August 2013: 2nd module: Mastering conflicts between party autonomy and arbitrators' powers and 3rd module: Mastering disputes involving states and state-controlled parties.

For more information please visit the ICAL Conference website : <http://www.juridicum.su.se/ical/conference2013>

