

Association For International Arbitration

# IN TOUCH



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February 2009



### The European Chamber of Arbitration

Dedicated to promote arbitration between East- and West-European relations, Mr. Johan Billiet, President of the Association for International Arbitration, together with Mr. Gennadiy Pampoukha, Chairman of the Permanent Court of Arbitration, and several other distinguished arbitration professionals from the Ukraine and France have brought a new arbitration organisation into life.

Their newest brainchild is called the "European Chamber of Arbitration" (Chambre européenne d'arbitrage), constituted in Belgium as an international non-profit organisation. It will operate as a secretary body in service of the "Tribunal for International Commercial Arbitration", which will mainly organise arbitration proceedings in international commercial disputes. All founders have both a profound long-term dedication to solving disputes and the matching experience in arbitrating international and national commercial cases. The focus of this promising project lies in introducing East-European companies to West-European arbitration methods and vice versa. The "European Chamber of Arbitration" expects to explore a new and flourishing market for arbitration in Eastern Europe, thereby offering dispute resolution services primarily- but certainly not exclusively- to East- and West-European commercial parties in dispute.



#### Inside this month's issue:

<i>The European Chamber of Arbitration</i>	1
<i>Conference on Arbitration in China</i>	2
<i>Claeys &amp; Casteels 4th Annual EU Energy Law &amp; Policy Conference: 22 &amp; 23 January</i>	2
<i>ICC's Young Arbitrator's Day: 19 January 2009</i>	3
<i>Upcoming events</i>	4

In recognition of all major arbitration principles, the "Tribunal for International Commercial Arbitration" lets party autonomy fully reign in the conclusion of agreements concerning the procedure of the dispute settlement, language of the proceedings, appointment procedure of arbitrators and the applicability of a substantial law of choice. Parties who turn to the European Chamber of Arbitration will be assured of outmost confidentiality in their commercial relations and dispute arrangements and can count on professionally communicating with the Chamber in three widespread languages: French, English, Ukranian and Russian, assuring easy accessibility for everyone.

To contact the European Chamber of Arbitration, please turn to its current seat:  
 Avenue Louise 146, B-1050 Brussels  
 Tel.+ 32 2 643 33 01



AIA invites all members and readers to contribute articles and/or speakers at our future conferences on „Arbitration in China” and Arbitration and Mediation in the Natural Resources and Energy Sector. To contact AIA, send an e-mail at:

[administration@arbitration-adr.org](mailto:administration@arbitration-adr.org).

### Conference on Arbitration in China

After our successful and enlightening “Conference on the new EU Directive on Mediation - First Insights” of 17<sup>th</sup> October 2008, the Association for International Arbitration is proud to present its endeavours to organise a new event. All our members, readers and all those intrigued by the latest developments in Asian Arbitration are kindly invited to take part in our newest “Conference on Arbitration in China”, held in Brussels on the 31 March 2009.

In ensuring lively discussions and cutting-edge debates on the characteristics of Chinese Arbitration and its influence on ADR-thinking in the rest of the world, the Association for International Arbitration is always on the search for interested professionals and arbitration practitioners the opportunity to speak at our conference as well as article contributions.

For more information, please email us at [administration@arbitration-adr.org](mailto:administration@arbitration-adr.org).

Claeys & Casteels 4<sup>th</sup> Annual EU Energy Law & Policy Conference: 22 & 23 January 2009

In addition to our planned « Conference on Arbitration in China », the Association for International Arbitration will be hosting a second event on 13<sup>th</sup> May 2009 in Brussels. The subject of the conference will deal with “Arbitration and Mediation in the Natural Resources and Energy Sector”.

In light of the preparation for this conference a representative of the Association for International Arbitration attended the “[Claeys & Casteels 4<sup>th</sup> Annual EU Energy Law & Policy Conference](#)” in Brussels on 22 & 23 January 2009. In these trying times where Europe, together with the entire world, seeks answers for decreasing oil prices, the challenges for the near future in developing and commercially supporting new energy sources increases the role of arbitration in energy disputes is growing each day. In order to adjudicate fair competition between different energy sectors, regulatory measures such as unbundling mammoth energy corporations from both producing or supplying energy and functioning as network operators, will not be sufficient to eliminate unfair intra-state energy dependence inside and outside the EU.



Arbitration or other forms of ADR come in handy so as to solve certain competition and investment disputes between internationally operating energy suppliers, producers or network operators, at the same time opening the doorway for EU consumer protection and climate control.

The Association for International Arbitration invites its members and readers to contribute in the organisation of our Conference on Arbitration and Mediation in the Natural Resources and Energy Sector, either by delivering a personal topic-related article, joining our sessions as a professional speaker or by participating in our event.

For more information, please do not hesitate to contact us at [administration@arbitration-adr.org](mailto:administration@arbitration-adr.org).



For an insight into European mediation practices after the new Directive, AIA offers a comprehensible and extensive booklet on the subject.



For purchasing information, please check our website at:  
<http://arbitration-adr.org/activities/publications.html>

### ICC's Young Arbitrator's Day: 19 January 2009

In a welcoming setting in the heart of Paris, law firm representatives, and arbitration enthusiasts from all corners of the world gathered for the ICC's Day for Young Arbitrators. The ICC Institute of World Business Law – with the support of the ICC Young Arbitrators Forum (YAF) – truly succeeded in organizing an up-to-date and practice-linked course by providing young arbitrators and young arbitration practitioners the necessary guidelines to start up future arbitration proceedings at the ICC. In addition to the intellectually qualitative debates supporting an interactive exchange of professional opinions, the sessions gave AIA a great opportunity to renew contacts and develop friendly working relations with arbitration practitioners from a very international audience.



In the morning session, Simon Greenberg, Deputy Secretary General and Mrs. Maria Hauser-Morel, Deputy Counsel for the ICC International Court of Arbitration, highlighted the most important details and controversies regarding the different types of formalities preceding and accompanying arbitration proceedings. In relation to the nomination of suitable arbitrators, it was stressed that certain difficulties may arise in two-way language disputes. To preserve party equality the best advice to both claimant and respondent is to appoint arbitrators who are familiar with their own preferred language. When nominating the chairman a balance can be sought by the party-appointed arbitrators by selecting a bilingual candidate who has a profound knowledge of the both languages of the dispute.



Another point of discussion is the preferred timing for an arbitration panel to render a partial or final award. Are arbitrators precluded from deciding on a case before agreement by the parties on the Terms of Reference? Generally, according to ICC practice, the Terms of Reference would be signed by all parties or approved by the ICC International Court of Arbitration in case one party does not sign the Terms of Reference. The Arbitral Tribunal would then proceed to render a partial or final award on jurisdiction or any substantive matters. However, it has been observed that some awards confirming the parties' consent over an *inter partes* resolved dispute have been made at the same time as the parties' agreement on the Terms of Reference.

Heavily debated and highly volatile in today's arbitration proceedings is the question of third parties joining the arbitration proceedings, especially in disputes concerning creditors contra subsidiaries of third party holding companies. Although no explicit answer was provided, the general requisite of consent of the third-party towards the disputing parties' arbitration clause seems to remain paramount for a mother companies' participation in the arbitration proceedings in which its daughter company is involved. Although recent cases have relaxed this preliminary condition in a mother-daughter context, it remains questionable if exceptions of the third-party-consent-rule are justified in "versus-versus-cases" where all three parties are in dispute with each other, but where only two parties have concluded an arbitration agreement, e.g. insurance disputes.



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Published by:  
The Association for  
International Arbitration



After an exquisite lunch at one of Paris' picturesque bistros, Mr. Serge Lazareff, Chairman of the ICC Institute of World Business Law, and Mr. Ian Kayanakis, Group Vice President Legal of Technip, led an animated discussion with the audience concerning the relations between the parties, arbitrators and counsel. In view of keeping the ICC Rules up-to-date and in search for further enhancements to these Rules, the limits and boundaries of an arbitrator's tasks was investigated thoroughly. When selecting the appropriate counsel for a case, it can be argued whether in-house expert counsel or specialized outside-counsel should be appointed. The perfect balance between the two must be dealt with in a case-by-case approach, one not being preferable over the other. What is advisable, however, is the appointment of a team with a division of tasks between the specialized counsel for the substantive issues and the qualified counsel for the procedural stakes raised in front of an ICC arbitration proceeding. The difference in functions of co-arbitrators in contrast to the tasks of the chairman is another pinnacle of the search for an equilibrium in the arbitration proceedings. Should the co-arbitrators solely assist the chairman with respect to the pressure levied upon them by the party who appointed them or should they fulfill an autonomous task as independent arbitrator and do the same work as the presiding arbitrator? Tendencies prevail to opt for the latter variable, irrespective of what happens in daily practice.

All in all, the ICC Institute of World Business Law delivered once more an outstanding and highly educational forum for both young arbitrators and ADR enthusiasts.

For more information on the activities of the ICC Institute of World Business Law, please visit <http://www.iccinstitute.org/> and for the ICC Young Arbitrators Forum, <http://www.iccyaf.org>



### Upcoming events :

- 5 February 2009 : [Dispute Resolution in Aeronautics & Space](#), organised by the ICC in Paris, France
- 2 March 2009 : L'exécution de la sentence arbitrale: actualités et perspectives, organised by the ICC in Paris, France under the guidance of Edouard Bertrand of the Campbell, Phillippart, Laigo & Associés (law firm)
- 31 March 2009 : Conference on Arbitration in China, organised by the Association for International Arbitration in Brussels, Belgium
- 13 May 2009 : Conference on Arbitration and Mediation in the Natural Resources and Energy Sector, organised by the Association for International Arbitration in Brussels, Belgium

*The team of the Association for International Arbitration would like to take this opportunity to wish our members and readers from China a prosperous, healthy, but most of all, happy Chinese New Year.*