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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 Offer If
You Register Now!

Calling all EMTPJ Alumni

Arbitration as an Effective
Tool to Resolve Cross-
Border Disputes in Financial
Markets: The Use of
Arbitration Under an ISDA
Master Agreement

Book Review: Arbitration In
Switzerland The
Practitioners Guide

Arbitration and The
Tobacco Industry
Developments In Light of
the MSA (1998) and ISDS

A Review of the MEAC
Analysis of the Egyptian
Constitution Referendum
2014

Conference "Entrusting
Antitrust Issues to
Arbitration"

Support the Future of
Mediation in Belgium (FMB)
Initiative

10 Reasons Why You
Should Apply for the EMTPJ
2014: From a Student
Perspective

Feature: Gold Sponsor
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Launch of the Brussels
Diplomatic Academy:
Investment Arbitration

AIA Call for Sponsorship
Partners 2014

Book Review: The South
China Sea Arbitration - A
Chinese Perspective

AIA Media Partner and
Supporter of the KLRCA
International Arbitration
Conference

AIA Media Partner and

**EMTPJ 2014: We Can Now Offer A Further Discount
Thanks To Our Sponsor Billiet & Co!**



Thanks to our sponsor Billiet&Co, we can offer you a special reduction on the European Mediation Training for Practitioners of Justice 2014 ([EMTPJ](#)). Instead of 4.500 euros, we are able to offer participants 11 days mediation training recognized by 18 mediation centers in and beyond Europe for a special price of 3.500 euros + a 25% discount until the end of April. If you are an AIA member or alumni of either the University of Warwick or HUB Brussels, we can grant you an additional 500 euro discount.

Don't miss this opportunity and register now via our [website](#).

We encourage mediators who can illustrate 200 hours mediation experience and 20 mediation cases, to apply for the AIA's Qualifying Assessment Program (QAP) which will take place at the end of the EMTPJ 2014 session on the 31st of August 2014. Please visit our [website](#) for details!



CALLING ALL EMTPJ ALUMNI

Are you an EMTPJ alumni and:

1. Want to provide feedback on the EMTPJ?
2. Would you like to share your mediation experience since the EMTPJ?
3. Would you like to have a profile visible on the EMTPJ website?

If so: visit and read our EMTPJ [Alumni page](#), then fill in our online feedback questionnaire and send it to emptj@arbitration-adr.org with a picture of yourself if desired.

We will provide the following starring system:

- 1 Star = EMTPJ graduate
- 2 Star = 50 mediations+
- 3 Star = 100 mediations+

Become a Member of AIA 2014!

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

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

Supporter of the 3rd DIS
Baltic Arbitration Days
2014

Emergency Arbitration
Procedures: Recent
Developments

AIA Recommends
The Association of
Mediation Assessors,
Trainers and Instructors
(AMATI)

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Cultural Communication: 10
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members!

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



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Billiet & Co Lawyers is a member of the IPG international network of law firms and other collaboration networks. In this way they frequently assist clients in other jurisdictions, thanks to their close collaboration with local experts.

For more information: visit the [Billiet and Co website](#).

Arbitration as an Effective Tool to Resolve Cross-Border Disputes in Financial Markets: the Use of Arbitration under an ISDA Master Agreement

by Merve Duman

The financial sector is an area where English or New York court jurisdiction has traditionally been favoured by market participants. However, arbitration as an alternative dispute resolution method in financial disputes has gained significance in recent years. According to statistics of the International Chamber of Commerce, the number of arbitrations arising out of disputes related to the finance sector dramatically increased from 7.2% to 15% between 2008 and 2010 (ICC Bulletin, Vol. 22, No.1, 2011, p. 5).

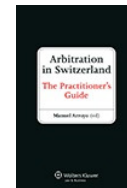
A recent survey in 2013 conducted by QMUL School of International Arbitration and PwC provides evidence of the flourishing role of arbitration in financial markets. It states: "the percentage for banking and finance is nevertheless quite significant at 69% with less than one quarter of general counsel in banking and finance declaring arbitration to be their most preferred option" ([Loukas A. Mistelis, Are Banks Changing? The New Big Industry for International Arbitration?](#)).

It is not arduous to deracinate the reasons behind the inclination to arbitration in financial markets considering the perceived advantage of arbitration. Apart from the obvious reasons for choosing arbitration (such as confidentiality, neutrality, party autonomy, demand for flexibility, as well as finality), there are more important reasons to consider in this context, such as the availability of a superior enforcement mechanism for arbitral awards and option of dealing with cases involving increased complexity in an efficient manner. These elements should convince financial market participants to choose arbitration as a way of resolving their disputes.

In today's globalized finance markets, cross-border transactions have a greater international dimension than ever before as they involve emerging market jurisdictions. Here, arbitration would be an effective means of dispute resolution compared to court judgements. A judgement rendered by a local court in one of the party's homeland may not be enforceable in another state, where the counter party is an

Arbitration in Switzerland: The Practitioner's Guide

Book Review by Olivia Staines



Arbitration in Switzerland, edited by Dr. Manuel Arroyo and published by Wolters Kluwer, provides an original, extensive and up-to-date volume to practitioners looking for practical information on arbitration and arbitration venues in Switzerland. Crucially, Switzerland has evolved into one of the most popular places for both domestic and international arbitration during the last century, with its roots in the Alabama claims case between Great Britain and the United States in 1872.

Today, Switzerland provides a modern and liberal statutory framework for international and domestic arbitration supplemented, if opted for, by the effective arbitration provisions of the Swiss Rules. Moreover, Switzerland puts emphasis on the education of arbitration practitioners.

The Swiss Arbitration Association (ASA), the Swiss Arbitration Academy, the Foundation for International Arbitration Advocacy and the Geneva Master in International Dispute Settlement all highlight the focus given to enhancing awareness and arbitration training in Switzerland. In addition, international and domestic arbitration law has further become part of the regular curriculum of Swiss law schools.

The guide anticipates that Switzerland will monitor the developments in the international arbitration arena and look to further improve the arbitration services available to clients in an environment of growing competition.

The publication is divided into thirteen chapters and examines conduct of the arbitration; interim measures, including those issued by

inhabitant or where the counter party has its assets. Enforcement of foreign judgements generally does not constitute a problem within the European Union and Switzerland under the Brussels/Lugano regime on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. However, considering the highly internationalized finance sector also involving non-European jurisdictions, problems concerning the enforcement of foreign judgements can be widespread.

On the other hand, arbitration offers a tempting solution to those difficulties through the application of the New York Convention, which has been ratified by nearly 150 states. According to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the "New York Convention"), each of the contracting states shall recognize arbitral awards as binding and enforce them.

Disputes arising out of financial markets have become more cluttered day by day considering the challenging sides of legal questions. Financial products like synthesized collateralized debt obligations might often include a high number of legal relationships that are governed by various individual contracts and framework agreements (Inka Hanefeld, Arbitration in Banking and Finance, NYU Journal of Law & Business, Vol. 9:917, 2013, p.925).

Arbitration can be an efficient tool for resolving a cross-border dispute arising out of complex financial transactions. Parties to a dispute can nominate arbitrators who have extensive knowledge of the subject matter transaction. Additionally, [P.R.I.M.E. Finance](#), a new financial dispute resolution body based in The Hague, may prove to be a good reason to opt for arbitration in complex financial disputes. With its panel of expert arbitrators and finance experts, it provides a bespoke forum for resolving complex financial disputes, including cases concerning derivatives, swaps, wholesale trading and other financial products.

The Use of Arbitration under an ISDA Master Agreement

A Master Agreement creates the contractual framework between the parties and governs the range of derivative transactions between them. The 1992 and 2002 International Swaps and Derivatives Association ("ISDA") Master Agreements are standard form master agreements for over-the-counter ("OTC") derivatives transactions. In both ISDA Master Agreements, the jurisdiction of the English or New York courts is provided for parties to resolve any disputes arising in relation to the Master Agreement or any transaction governed by it (2013 ISDA Arbitration Guide, September 2013, p. 3). However, following increased demand of arbitration on behalf of ISDA members and following amendments to the Master Agreement accordingly, the 2013 ISDA Arbitration Guide was published on 9th of September, 2013.

The ISDA Guide serves as guidance on the use of an arbitration clause either with the ISDA 2002 Master Agreement (the "2002 Agreement") or the ISDA 1992 Master Agreement (Multicurrency – Cross Border) (the "1992 Agreement"). The guide can be extremely helpful to practitioners and includes explanations of key concepts in international arbitration such as the importance of the seat of arbitration and of the choice of arbitral rules, as well as some of the factors often cited as potential advantages and disadvantages of arbitration.

The ISDA Guide also provides model clauses for use with several arbitral institutions, including ICC, LCIA, AAA, HKIAC, SIAC and Swiss

emergency arbitrators; taking of evidence; parallel proceedings; multi-party and multi-contract arbitrations; multi-tiered and hybrid arbitration clauses; recognition and enforcement of awards, including grounds for refusal; setting aside of awards; and revision of awards in detail.

Chapter five inspects sports arbitration under the Court of Arbitration for Sport (CAS) rules and is particularly interesting due to the fact that it analyses the CAS Code and the text of the CAS Procedural rules so as to then go into an in depth commentary. This chapter is therefore highly recommended to those working within the realm of sport arbitration.

Written by Swiss arbitration practitioners representing all the leading Swiss arbitration firms, the contributions balance theoretical and legal background on the one hand and practical aspects of arbitrating on the other with great efficiency. Additionally, reference to Switzerland's large body of case law is provided.

We recommend this guide to practitioners and academics conducting research into arbitration in Switzerland. For more information on how to purchase this book, please visit the Wolters Kluwer [website](#).

We recommend [KluwerArbitration.com](#) to our readers conducting research in the field. Keep updated!

Arbitration and the Tobacco Industry Developments In Light of the MSA (1998) and ISDS

An Overview

by Olivia Staines

In the 1990's numerous U.S states started to file lawsuits against the tobacco industry on the grounds of increased medical and healthcare costs due to tobacco related illnesses. In light of this, discussions arose regarding a joint settlement between the states and the tobacco industry.

This led to the Tobacco Master Settlement Agreement (MSA) in 1998 between leading tobacco manufacturers Philip Morris, RJ Reynolds, Brown & Williamson and Lorillard, and forty six U.S states as well as the District of Columbia, Puerto Rico, and the Virgin Islands. The remaining four: Florida, Minnesota, Mississippi, and Texas reached their own settlements with the tobacco industry.

Crucially, The MSA restricted the advertising, marketing and promotion of cigarettes, established public access to documents and required manufactures to provide a large amount of funds to states as compensation (approximately \$195.9 billion from the time of the agreement through 2025). From 1998-2012, states reportedly received \$107 billion from the tobacco industry.

In turn, the states are required to collect escrow payments from tobacco companies which were not signatories to the MSA in order to ensure that they not lose market shares.

The legislation has been criticized for being too slack on the major tobacco companies. By granting legal protection in exchange for money, the tobacco industry has emerged from the state lawsuits even more dominant than before. Moreover, it represents a lost opportunity to curtail cigarette use.

However, the four tobacco companies purported that 15 states failed

arbitral rules and provides for a number of preferred seats including London, New York, Paris, Hong Kong and The Hague. The clauses are primarily designed for use with the 2002 Agreement, but additional wordings are also provided for the 1992 Agreement (2013 ISDA Arbitration Guide, September 2013, p. 10). It is essential to note that model clauses can be tailored specifically to parties' needs and they include clear wording in order to avoid any confusion. The clauses contain a separate governing law provision that is crucial where the seat of arbitration differs from the parties' choice of governing law for the Master Agreement. The model clauses also consist of the choice of procedural rules, seat, language, number of arbitrators and appointment process.

Conclusion

The launch of P.R.I.M.E. Finance and the 2013 ISDA Arbitration Guide reflect the eagerness of market participants for arbitration as an alternative dispute resolution method. In addition to the aforementioned advantages of arbitration, the recent developments indicate that arbitration has become more popular with market actors than ever before, as an effective tool to resolve cross-border disputes in the financial sector.

A Review of the "MEAC Analysis of the Egyptian Constitution Referendum 2014"

by Medhat El-Banna

The Middle East and North Africa Forum [MENA] at the International Court for Dispute Resolution INCODIR is highly involved in the Peace Mediation and Peacebuilding efforts in Egypt and was one of the main players conducting analysis on the Egyptian constitution referendum 2013.

As the President of MENA and as an ADR expert highly involved in the Egyptian dispute, the MEAC Report, which examines the Referendum amending the Egyptian Constitution in 2014, was referred to me by a colleague for review.

It is important to note that this was written by a politician and not a peace mediator and consequently, I have the following notations on it:

The Analysis mentioned that the referendum "reduces the chances of finding a political solution to the current impasse"

The MEAC report cited that the referendum "reduces the chances of finding a political solution to the current impasse". This puts to one side the key role of the peace mediator, who should not enter the dispute as if it is an open book exam but rather, come prepared with the answer-sheet to the formal question paper.

I have elucidated to my ADR experts that we are in an exam and that it is not up to us to choose the questions. What happened will reduce the chances to reach a settlement from a certain mediation approach, but it will increase the chances of reaching a settlement from another mediation approach.

Therefore, if a writer is using the first approach, I advise him to switch to the opposite and be optimistic when looking at the points in any given situation (not just the referendum) as this enables one to move forward.

The Analysis mentioned that Activists campaigning for a 'no'

to diligently enforce state tobacco laws by not fulfilling the requirement to collect funds from the tobacco companies during 2003, and as a result, the tobacco companies were entitled to a refund under the terms of the 1998 Master Settlement Agreement (MSA).

On the 11th of September 2013, the arbitration panel ruled in favor of the tobacco companies. The panel ruled that nine states had enforced the requirements while six had not. Numerous states have indicated that they intend to appeal the ruling against them. On the other hand, the states that were ruled in favour of: Colorado, Illinois, Iowa, Maine, New York, North Dakota, Ohio, Oregon, and Washington, will receive disputed funds from the tobacco companies that were previously withheld.

However, the ruling could have further complications. The arbitration only deals with 2003; if tobacco companies seek payments from previous years, it could cost states millions of dollars. In light of the above, this case is certainly worth monitoring in the coming months.

In addition, somewhat in parallel, Australia's trade lawyers and Philip Morris met in Toronto this year. From the 1st of December 2012, Australia introduced the plain packaging law which provides that companies have to sell their cigarettes in a logo-free, dark brown packaging. This combined with the tax increases, aims to bring down smoking rates from 16.6 per cent in 2007 to less than 10 per cent by 2018.

Two years have passed since the tobacco company brought Australia to arbitration on the grounds of a 1993 free trade agreement between Hong Kong and Australia seeking the suspension on the plain packaging laws and compensation for the loss of trademarks.

The industry relied on the Investor State Dispute Settlement (ISDS) provisions delimited in the majority of trade agreements, allowing multinational corporations to take legal action against governments on the basis of their interests being damaged by government decisions.

As critics have highlighted, the consequences of this are far reaching as Australia was then brought into conflict with the Ukraine, Honduras, Indonesia, Cuba and the Dominican Republic which consequently complained to the WTO with regard to Australia's strict tobacco laws.

This echoes the case of Uruguay in 2010, where Uruguay insisted that health warnings cover the majority of cigarette packs and prohibited companies from cigarettes labelled as *light* or *mild*. In this case, Philip Morris brought an action through the ICSID on the grounds that such laws infringed its trademarks and breached the provisions of a 1991 BIT between Uruguay and Switzerland. It looked to stop the laws from coming into fruition and to receive compensation and penalties.

As a result, the fairness of current ISDS adjudication and vulnerability of the system to corporate abuse has been heavily criticized. Consequently, this dispute is also something which is worth following.

Ultimately, both the issues under the original 1998 MSA and the ISDS, illustrate the lengths that the tobacco industry is prepared to go to fight for their product, as well as the power that it has over countries sovereignty. At the end of the day, it is up to the countries themselves to decide how far they are prepared to go to match them.

vote were arrested

Unfortunately activists campaigning for a no vote were arrested and protestors were threatened with force. If Egypt were a stable democracy or even a stable country, my opinion on the referendum as a legal expert, is that it is void.

However, Egypt never knew any form of democracy (either inside or outside the voting room) until the 25th of January 2011. Arresting activists campaigning for a 'no' vote, is a serious breach of "outside the voting room" democracy, but let us go back to the past referendums and elections since 2011 where one can reasonably argue that giving the poor "Cooking oil and sugar and rice" is also a serious breach and that telling people who vote "no" that God will send him or her to hell is also a step in the wrong direction. We learned as mediators to be solution oriented NOT dispute oriented.

Regarding the numbers and percentage

The MEAC report contains a lot of mixed numbers and percentages. It is mentioned that the poll saw a turnout of approximately thirty eight percent which precedes that of 2012. The results illustrate that more are in favor of saying "yes".

Our Role as peace mediators

The MEAC report to a great extent is based on fairness, and it shows that fairness is more important than reaching a settlement to the dispute. I do believe in the school of thought that says that our task as mediators is to help the parties to reach a settlement, whether it is fair or not, so I submit that focus should be given to how to resolve the dispute rather than on whether the settlement is fair or not. Ultimately, if we keep focusing on fairness, the dispute will undoubtedly persist, the economy will continue to crumble and poverty will continue to proliferate.

Legal points in the report

The report also contains some legal points with regard to the new constitution which I shall indicate and briefly discuss. For example it has been highlighted that "Civilians are to be tried by military tribunals" which is debauched, but undoubtedly an improvement to the previous constitution. In addition, it is stated that there will be "A prohibition on parties constituted on a 'religious, gender, ethnic or geographical' basis". This is an ineffective article, it was the same case for the constitutional declaration made by the SCAF in the 2011 and under it, half a dozen religious parties was formed.

Legal points (Our Point of View)

Our point of view of the new constitution as legal experts and not as ADR experts is that it is better than 2012 Constitution, but that we are highly disappointed with it as it could be much enhanced. Its two main defects are: 1- Some articles were bent for the sake of the El-Noor Party (The Salafians) and 2- Some articles are tailored against the Muslim brotherhood group, which will harm others who are unrelated.

President of MENA Forum, the International Court for Dispute Resolution (INCODIR), AIA Egypt.

10 Reasons Why You Should apply for the European Mediation Training for Practitioners of Justice (EMTPJ)

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

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

Moderator: Tatiana Proshkina

16:45 - 18:15 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

An EMTPJ students perspective

1. It offers theoretical and practical training within a European perspective.

The EMTPJ is a one of a kind training as it is the only course which gives an up to date, wide-ranging and comprehensive European standpoint on mediation. All the latest developments in EU legislation, policy and EU Member states are considered.

Focus is given to:

>Theory and practice of EU law and Mediation Acts (e.g. differences between voluntary and judicial mediation, recognized and non-recognized mediators, confidentiality, legal aid etc).

>Theory and practice of contract law in Europe (e.g. students learn which agreements have to be written, what kind of content has to be included in the mediation agreement, who writes the settlement agreement, and their respective consequences on the mediation).

>EU ethics in Mediation and the EU voluntary Code of Conduct for Mediators (eg: neutrality and impartiality, rules and codes of conduct of the recognized mediation centers, general mediation principles and ethics, development of a basis behavior such as respect, trust, reliability, interest for people and their problems, passion for process support, tolerance, ambiguity, and neutrality).

Other modules include the function of party experts and counsel in civil and commercial mediation, interventions in specific situations, conflict theory and conflict resolution methods.

2. International mediation is also explored

The specificities of intercultural mediation, from cultural impasse to the visible and invisible aspects of culture and prejudice are considered. Developments taking place outside of Europe are investigated.

3. It is recognized by 18 mediation centers in and beyond Europe.

The EMTPJ is recognized by the following ADR entities: The Institute of Arbitration (Belgium), Shanghai Commercial Mediation Center (China), HUM - Hrvatska Udruga za Mirenje (Croatia), Cyprus Mediation Association (Cyprus), Integrierte Mediation (Germany), GMI (Greece), Concilia (Italy), Mediacija (Latvia), TIM (Romania), Rakmo Institute (Slovenia), Adimer (Spain), Mediacion y Convivencia (Spain), CIArb (UK), Gleamed (UK), InterMediation (UK), European Arbitration Chamber (Ukraine), Clerksroom (UK) and Malta Mediation Center (Malta).

Course participants, who complete the course successfully, will receive information on how to apply for accreditation with each of the centers.

4. It is open to professionals from various different fields whether they have a background in mediation or not.

Whether you are an experienced mediator or not, the course is structured in such a way that it is beneficial to all students. Since 2010, the EMTPJ has welcomed experienced mediators with approximately 100 mediation cases and over 300 hours mediation experience, as well as recent graduates who want to learn how to conduct mediation in a thorough and professional manner. The feedback from students of both categories has been extremely positive. Both theoretical and practical elements are valuable and constructive for all.

5. It offers a truly international learning environment with students

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).

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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For more information: visit the [Billiet and Co website](#).

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

and teachers travelling from all over the world to participate.

In the past, the EMTPJ has welcomed lecturers from all over the world. Although the majority of them are based in Europe, students have had the pleasure of working with lecturers based in the U.S and Australia. Each lecturer is able to bring their extensive knowledge and experience to the table making this a unique and multinational event. The student group is very interactive and consists of practitioners from Europe, Lebanon, Barbados, the U.S, Australia and Asia.

6. It is based in Brussels, the heart of Europe.

Brussels is highly accessible as a city due to its centrality. Straightforward connections to and from the rest of Europe and abroad are available on a daily basis. Brussels's size, culture, history and multi-cultural environment make it a perfect location to study and take part in the EMTPJ.

7. It is flexible, for those who are interested in part of the program but not everything; we offer EMTPJ Continuous hours which allows participants to pick and choose subjects.

An 11 day course can clash with a busy working schedule. Hosting the training in August aims to minimize this issue. EMTPJ Continuous hours takes into consideration the fact that some students may not have the time or interest in signing up to all the modules and so they can pick and choose subjects accordingly.

8. It provides a solid basis for students to build their own mediation practice.

The aim of the course is to give participants the where with all to start mediating or continue mediating depending on the level of experience gathered prior to initiating the course. This is very encouraging.

9. Thanks to AIA's Sponsor Billiet & Co, the EMTPJ tuition fee is great value for money.

The EMTPJ course is offered at 3,500 euros (VAT excl) and a 25% discount until the end of April 2014 is provided. In addition, AIA Members and alumni from the University of Warwick (UK) and HUB (Belgium) respectively, can benefit from an additional 500 euro discount.

10. The EMTPJ has a solid network for their Alumni. Since 2014, the EMTPJ website has an EMTPJ alumni page which looks to grow

in the coming months. This is accessible via the link <http://emtpj.eu/alumni.htm>.

Visit <http://emtpj.eu/2014> to Register!

The South China Sea Arbitration: A Chinese Perspective

Book Review by Olivia Staines



This publication looks to offer a Chinese angle on some of the legal issues before the Arbitral Tribunal in the context of the South China Sea dispute. In this way, it seeks to provide the Tribunal with a more complete summation of the facts underlying the Philippines' claims as

resolution proceedings

- lawyers and in-house counsel
- civil servants involved in state's investment policies.

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

[More information](#)



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The Association for International Arbitration is seeking Sponsorship Partners for 2014. In particular AIA offers the following Sponsorship Packages: Bronze, Silver and Gold.

- Bronze

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

- Silver

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

- Gold

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complete summation of the facts underlying the Philippines claims so as to assist the Tribunal in meeting its obligations under UNCLOS.

Focus is given to questions of jurisdiction, admissibility and other objections which the Arbitral Tribunal will have to decide as a preliminary matter. The book indicates obstacles to the Tribunal deciding the case on the merits and suggests that it would be more appropriate to refer the disputes back to the parties for them to reach a settlement.

It is clarified that The South China Sea Arbitration: A Chinese Perspective does not intend to represent the official position of the Chinese Government but rather, to serve as an amicus curiae brief of academics acting as independent experts of international law. By submitting possible legal arguments on behalf of an absent China, the administration of justice and rule of law aim to be reinforced.

The book is divided into six chapters including an introduction and annexes. The chapters consider the following issues in detail: whether there is a case to answer in the South China Sea Arbitration context, jurisdiction in cases of default of appearance, admissibility in interstate arbitration and jurisprudential tenability of the Philippines v China Arbitration on South China Sea disputes.

We recommend this publication to academics, practitioners and students interested in this area who are looking for a detailed analysis of a Chinese standpoint in this context. In particular, chapter three written by Michael Sheng-ti Gau, Professor of Public International Law at National Taiwan Ocean University in Keelung, contemplates the issue of jurisdiction in cases of default of appearance meticulously.

Fundamentally, the chapter investigates the duties of the Tribunal, the requirement of a dispute between parties (including determination of disputes and groups of claims, the real disputes between the parties and identity of disputes under section 1 and 2 of the Convention), the requirement that the disputes concern the interpretation or application of the convention and disputes removed from compulsory jurisdiction under Article 298 UNCLOS.

In sum, the editors, Stefan Talmon: Professor of Public International Law and Director at the Institute for Public International Law at the University of Bonn and Bing Bing Jia: Professor of International Law, Law School, Tsinghua University, Beijing, together with contributors Chenxi Mi, PhD candidate in Maritime Law at Dalian Maritime University and Haiwen Zhang, Phd Peking University, provide an original, highly comprehensive and structured overview of China's stance.

For more information on how to purchase this book, please visit the Hart Publishing [website](#) and check out their other publications!

Emergency Arbitration Procedures: Recent Developments

by Merve Duman

In international arbitration proceedings, it is generally known that the constitution of an arbitral tribunal can take a considerable amount of time. There is sometimes a need for urgent interim relief prior to the appointment of the tribunal in some disputes, in order to preserve certain evidence or serve some assets from the risk of disposal. Therefore, in recent years, an increasing number of arbitral institutions have amended their rules to allow for some form of emergency relief.

The revised ICC Arbitration Rules (2012)

The revised ICC Arbitration Rules, which came into force on 1 January

Contact the AIA Team via [email](#) for details!

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



The revised ICC Arbitration Rules, which came into force on 1 January 2012, include the appointment of an emergency arbitrator in cases where urgent interim or conservatory measures are sought before the arbitral tribunal is constituted (*Article 29 of the Rules and Appendix V*). The new emergency arbitrator rules apply automatically to parties

having opted to arbitrate their dispute under the ICC Rules, unless the parties expressly opt out of the Emergency Arbitrator Provisions if they do not wish the procedure to be applicable to their disputes. The ICC emergency arbitrator procedure is available immediately, and can be invoked even before a Request for Arbitration is filed (<http://www.iccwbo.org/products-and-services/arbitration-and-adr/arbitration/emergency-arbitrator/>).

The ICC emergency procedure does not confine parties to arbitration as a dispute resolution method. Namely, it is an additional option available to parties to an ICC arbitration agreement. Article 29(7) of the Rules expressly states that any party can also seek urgent interim and conservatory measures from a competent authority.

The application of the Emergency Arbitration Procedure is limited to signatories of the arbitration agreement or their successors (*Article 29(7)*). This provides the responding party faced with an application for Emergency Measures with a certain degree of protection and means that the application of the Emergency Arbitration Procedure to treaty-based arbitrations is excluded.

Articles 2(1) and 6(4) of Appendix V set out short deadlines that are consistent with the urgent nature of the emergency proceedings. This principle is reflected in the fact that there is no default answer to the application for Emergency Measures within a certain short deadline, that the applicant must pay a fee for the emergency arbitrator procedure to the ICC upfront (Articles 1(3)(h), 7 of Appendix V), but also that the applicant must, as a rule, file a request for arbitration within 10 days from the application, absent which the President will terminate the emergency arbitrator proceedings (Article 1(6) of Appendix V) (*Raja Bose and Ian Meredith, Emergency Arbitration Procedures: A Comparative Analysis, International Arbitration Law Review, 2012, p.187*).

The Revised Swiss Rules of International Arbitration (2012)

The revised Swiss Rules came into force in 2012 with the some renovations including the provision regarding Emergency Relief at article 43. The provision grants an option to parties to seek urgent interim measure before the constitution of the tribunal. Article 43 is automatically applicable unless parties opt out of the Emergency Arbitration Procedure.

A party requiring urgent interim measures before the tribunal is constituted, may submit an application for emergency relief proceedings to the Secretariat (*Article 43 (1)*). After receipt of the registration fee and the deposit, the Court appoints a sole emergency arbitrator.

According to article 43 (1) in conjunction with article 26, any measure that an arbitral tribunal would be able grant may be granted by an emergency arbitrator. Therefore, it is possible to state that emergency relief decisions are enforceable to the same extent as interim measure decisions are rendered by an arbitral tribunal. (*M. Scherer, Revised Swiss Rules of International Arbitration Enter into Force, 2012*)

The new HKIAC Rules (2013)

The Hong Kong International Arbitration Centre published the Administered Arbitration Rules ("the HKIAC Rules") on 1 November

(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, mining, utilities etc).

It deals both with formal adjudicatory procedures (mainly investment and commercial arbitration), but also mediation/ADR methods, negotiation and managerial ways to manage transnational disputes efficiently. See www.transnational-dispute-management.com for more information.

The Association of Mediation Assessors, Trainers and Instructors (AMATI)



In the second week of March a group of well-known UK based mediation trainers launched a new association for mediation trainers and assessors. Within the space of a few short weeks its membership has grown to over 100, with initial invitations to join focused on IMI Certified Mediators and the coaches of the ICC 9th International Student Mediation Competition in Paris.

The Director of AMATI, Professor Andrew Goodman, says the idea for an association grew from the need to improve and standardise mediation training, to get the smaller and more isolated trainers talking to each other, including internationally, to look at new training methodology, and to assist training organisations and regulatory bodies world-wide offer public assurance to users about the way in which mediators are trained and qualified. The concerns are generic, and mediation trainers from every field – civil, commercial, family, workplace/employment and community – are welcome.

The new Advisory Board thus far will consist of Professor Hal Abramson (USA), Dr Greg Bond (D), Amanda Bucklow (UK), Jane Gunn (UK), Phillip Howell-Richardson (UK), Alan Limbury (AUS), Charles Middleton-Smith (UK), David Owen QC (UK), Paul Randolph (UK), Thomas P. Valenti (USA) and Juanita Wijnands (NL). There will be some significant additional names to the Board in due course, with members also having offered their services as regional directors as far away as Brazil and the Philippines.

AMATI can be reached at www.amati.org.uk and e-mailed at info@amati.org.uk. It can be followed on Twitter® @AMATIorguk on Facebook® and has a LinkedIn® group.

AMATI intends working with any organisation that can benefit from its services. The association will be holding its first event in London on September 22nd at the International Dispute Resolution Centre in Fleet Street, and will be the first major conference on the future of mediation training. Details will follow in a future issue of AIA news.

Membership of AMATI is by invitation only. However members of AIA and our readers are free to seek an invitation or to register their interest by emailing info@amati.org.uk

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2013. The HKIAC Rules explicitly state that parties may apply for the emergency arbitration procedure prior to the constitution of the arbitral tribunal (*Article 23*). Under the HKIAC Rules, a party seeking urgent relief may submit an application concurrent with or after the filing of a Notice of Arbitration (*Schedule 4, entitled Emergency Arbitrator Procedures*).

The Rules grant that the HKIAC will seek to nominate an Emergency Arbitrator within two days after the receipt of the application and deposit (*Schedule 4(5)*). Regarding the challenge of the appointed emergency arbitrators, the HKIAC Rules allow parties only three days to challenge the appointment of an emergency arbitrator, after which the HKIAC has three days to rule on the challenge (*Schedule 4(12)*).

According to the HKIAC Rules, an emergency arbitrator has maximum flexibility over the procedural matters (*Schedule 4(11)*). In particular, an emergency arbitrator has the power to rule on his/her own jurisdiction under HKIAC Rules (*Schedule 4(11)*). Emergency arbitrators may also order that the party seeking emergency relief post an appropriate security (*Schedule 4(17)*).

It is evident that emergency interim decisions have the same effect as interim measures ordered by an arbitral tribunal. Parties therefore undertake to comply with emergency decisions “without delay” (*Schedule 4(16)*).

JCAA's Commercial Arbitration Rules (2014)

The Japan Commercial Arbitration Association has introduced an amended version of its Commercial Arbitration Rules (the “New Rules”) on the 1st of February 2014. The New Rules cover some important issues in international arbitration, including emergency arbitrators, interim relief, expedited proceedings and multi-party arbitration.

The New Rules accommodate facilities for the appointment of emergency arbitrators and the granting of emergency relief. According to Rule 71(4), upon the request in conformity with Rule 70, an emergency arbitrator shall be appointed within two business days of the receipt of an application and the decision shall be rendered within two weeks from his or her appointment. Moreover, it allows a party to apply for the appointment of an emergency arbitrator prior to the filing of a request for arbitration, provided that a request is filed within 10 days.

Parties shall be bound by the rulings rendered by emergency arbitrators (*Rule 72(5)*). Emergency measures shall have the same effect as interim measures ordered by an arbitral tribunal and remain in effect until the arbitral tribunal modifies, suspends and terminate such emergency measures under the New Rules.

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Please visit the [link](#) for details!

If you are an AIA member, please illustrate this when registering and use the code AIA08.

Bescherming van zakelijke, economische en nationale belangen -Over bedrijfs- en staatsgeheimen en hoe ze beschermd worden [link](#)

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