



E-LETTER

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WELCOME

Welcome to the second YIAG E-Letter. The six months that have passed since our last E-Letter have been very busy and interesting. YIAG events included the last Tylney Hall YIAG Symposium, as well as the successful launch of one of YIAG's most important initiatives, namely YIAG's first Training Seminar. The YIAG drinks reception held in conjunction with the LCIA-CANACO symposium in Mexico was another first. More about these below and our plans for the next six months, together with a mention of recent developments in law of international arbitration from various jurisdictions. We are particularly proud to announce the re-launch in 2007 of the prestigious Gillis Wetter Memorial Prize for academic writing by students and young lawyers on international arbitration (private or public).

Goodbye Tylney Hall - September 2006

As many of you will know, the LCIA European Users' Council Symposia have outgrown their traditional Hampshire venue at Tylney Hall and the LCIA has now decided to hold the next symposia at The Grove Hotel in the neighboring County of Hertfordshire. This should allow more members to participate in these

popular events. YIAG will continue its practice of holding a symposium the day before the grown-ups' event in September, and will therefore also migrate to The Grove in 2007.

This September's Symposium was however significant, not only because it was YIAG's last at Tylney Hall, but also because it was Irene Bates' last YIAG event before turning to explore new opportunities outside the LCIA. YIAG has always enjoyed Irene's unfaltering support and assistance on all levels. We take this opportunity to thank her once again and wish her luck and happiness in her new endeavours. Thanks are also due to Torsten Lörcher who kindly sat in for Melanie van Leeuwen who had just started her maternity leave. Melanie has since become the proud mother of Sofia – Congratulations!

The proceedings followed the normal format, with topics and questions being presented by delegates and opened to the floor for wider discussion. Topics included questions concerning the proper parties to the arbitration agreement, arbitral bias and challenges, costs, the discovery of documents and comment on the desirability of amicus briefs in investment arbitration. We rounded the day off with drinks on the terrace, followed by more drinks at the European Users' Council Reception.



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The YIAG Training Seminar - Bucharest

We are pleased to report the successful launch of YIAG's training seminar programme, in Bucharest on 9 October.

As we mentioned in the previous E-Letter we believe that providing free arbitration training seminars for young lawyers in emerging-economy countries is an excellent way to advance one of YIAG's principal aims of promoting the understanding and use of international arbitration law and practice. The seminar was attended by more than 40 delegates from Romania, Bulgaria, Hungary and Estonia and the programme, which was lead by Domitille and Matt, covered the fundamental aspects of international arbitration (from the arbitration agreement to enforcement and more) and included five case studies. Participants responded favourably to the interactive format of the sessions, sharing their experiences and raising questions for discussion. The proceedings were followed by an informal dinner and a tour of the trendy parts of downtown Bucharest!

Feedback from delegates has been highly positive; both with regard to the content of the seminar and for providing a free event for young practitioners in a region where there are fewer opportunities to attend conferences on international arbitration.

A special note of thanks goes to everyone who helped in promoting, preparing, presenting and sponsoring the seminar, including several YIAG members: **Crenguta Leaua** from Tanasescu Leaua Cadar, in Bucharest, who sponsored the rental of the room, promoted the event extensively in Romania and welcomed the participants - Crenguta was also a terrific host on the day and night. **Barbara Steindl** (Vienna) took care of the promotion of the event in the region and **Markus Schifferl** (Vienna) spoke at the seminar. Their firm, **Schönherr Rechtsanwälte**, kindly sponsored the event by providing great refreshments, a superb lunch and copies of the materials for delegates. Last but not least, thanks to **Tobias Zuberbühler** from Lustenberger Glaus in Zurich spoke at the seminar and prepared several case studies.

Building on this significant success, we plan to hold the next training seminar in the spring or early summer of 2007 in the Baltics. We would welcome any help you are able to offer in promoting, preparing, presenting and sponsoring the next seminar. If you want to help and are able to devote the necessary time (and finance your travel and accommodation expenses) please send a message to the E-letter email (yiagEletter@Icia.org) quoting "Spring 2007 Training Seminar" in the subject field.

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YIAG Drinks - Mexico

On 27 October 2006, YIAG's Regional Representative for Latin America, **Sofia Gomez Ruano**, hosted an informal drinks reception for more than 20 YIAG members and other young arbitration lawyers, to coincide with LCIA-CANACO symposium in Mexico City. Adrian Winstanley, Director General and Registrar of the LCIA, motivated those who were not already YIAG members (including the heads of the two Mexican main national arbitral institutions, CAM and CANACO) to join our Group and the reception was a huge hit with all attendees. Further get-togethers of this nature are now in the pipeline. A special thanks to law firm Gonzalez Calvillo, S.C. in Mexico City, for sponsoring the event.

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Call for Submissions - The Gillis Wetter Memorial Prize

Always in search for new ways to promote and recognise young lawyers in the field of international arbitration, the co-chairs are proud to announce that YIAG has been tasked with re-launching the prestigious **Gillis Wetter Memorial Prize**, for essays in the field of international arbitration (private and public) by students and young lawyers.

Author of many highly regarded texts on international arbitration, including "The International Arbitral Process" (1979), Dr. Gillis Wetter, was one of the first truly great international arbitration lawyers of modern times. He is remembered in particular for extending an "avuncular and helping hand" to those students and young lawyers seeking to make their way in the world of international arbitration. His untimely death in 1995 was viewed by his friends and colleagues as a great loss to the cause of international arbitration. To commemorate his role as a scholar and educator in the field of international arbitration, the annual Gillis Wetter Memorial Prize was established in 1996. The prestigious prize has in the past been awarded to a number of notable young lawyers between the years of 1997 and 2001 (including, in 1997, to former YIAG Regional Representative Amazu Asouzu).

Judged by an international committee of eminent arbitration lawyers (including in the past, the likes of Judge Birgitta Blom (Sweden), Judge Stephen Schwebel (USA), Professor Pierre Mayer (France), Professor Yasuhei Taniguchi (Japan), Professor Alexander Komarov (Russia) and Professor Martin Hunter (England), the winning essay will be published in Arbitration International and the winner and runners-up will receive generous prizes and a certificate signed by the Judges. Further details concerning the prize and the composition of the current panel of Judges will be made available in a separate announcement in the New Year.

The competition is open to YIAG members and non-members alike. Please email your submissions to the E-Letter email address (yiagEletter@lcia.org) quoting "Gillis Wetter Memorial Prize" in the subject line, by 30 June 2007. The winners will be announced before the end of 2007.

Finally, we wish all YIAG members a merry Christmas and holiday season and a very Happy New Year!

Domitille, Matt, Melanie and Shai

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MAIN FORTHCOMING EVENTS

You may wish to note the following (already planned) events in your diary. A more complete calendar of arbitration events, organised by other institutions and associations, including those for the not so young practitioners, can be found at the end of the E-Letter:

2007

March: YIAG Symposium, Madrid

Spring: YIAG Training Seminar, the Baltics

May/June: Co-sponsored YAP Conference, Brussels

September: YIAG Symposium, The Grove near London (Tylney relocated)

Autumn: YIAG Training Seminar, Gulf region

2008

Spring: YIAG Training Seminar

June: co-sponsored YAP Conference, immediately preceding or following the 2008 ICCA Conference in Dublin

September: YIAG Symposium, The Grove near London

Autumn: YIAG Training Seminar

REPORTS FROM YIAG MEMBERS

Thank you for your many excellent contributions we received. We will continue to do our best to include at least one contribution from each country. Please continue to send your contributions consisting of notes of between 4 – 6 paragraphs relating to recent interesting developments in the field of international arbitration in your jurisdiction to yiagEletter@lcia.org.

Please note that the reports in this section are not intended to be comprehensive and should not be used as a primary source of legal research. The views expressed in the notes published in YIAG E-letter are those of the individual authors and are not expressed on behalf of the LCIA.

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Brazil



Bernardo Prado da Camara

Sette Câmara, Corrêa e Bastos Advogados Associados

Brazil's recent adoption of the New York Convention (1958), through the Decree n.º 4,311/02, overhauled the procedure for the recognition and enforcement of foreign arbitral awards in the country, as confirmed by a recent case decided by the Superior Tribunal de Justiça

Under the new legislation any foreign award will be governed by the NY Convention procedures. It is, however, important to bear in mind that its recognition and enforcement will have to follow the same procedures involving any legal decisions from abroad.

Accordingly, and in order to reach recognition or enforcement, the interested party will have to legalize the foreign arbitral award before the Brazilian Higher Court (Superior Tribunal de Justiça). Both the Brazilian Code of Civil Procedure and the Arbitration Law stipulates that such a party will have to present the original copies of the award and of the arbitration clause or submission agreement, together with an official translation of these documents. In the event the original versions are not available, the interested party will have the option of presenting an authenticated copy, duly legalized by the Brazilian consulate at the seat of arbitration, also translated.

The Superior Tribunal de Justiça, however, is not able to reexamine the merits of the award or to reassess the arguments of the losing party. In fact, it will be duly legalized unless one of the New York Convention objections applies, namely: (i) the parties to the arbitration agreement were under some incapacity under the law applicable to them; (ii) the agreement was not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award

was made; (iii) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present his case; (iv) the award dealt with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission agreement, provided that, if the decision on matters submitted to arbitration can be separated from those not so submitted, the part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties; (vi) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which the award was made; pursuant to Brazilian Law, the subject matter of the dispute is not capable of settlement by arbitration, and when the recognition or enforcement would be contrary to its public policy.

The application of the new procedure was confirmed in the decision of the Superior Tribunal de Justiça in the case nº [SEC 856, EX 2005/0031430-2, published in 27th June, 2005](#), involving the legalization of a foreign arbitral award pronounced by the Liverpool Cotton Association – LCA, in arbitration between a Swiss seller and a Brazilian buyer of African cotton.

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England



Mark Beeley
Vinson & Elkins RLLP, London

The recent case of [ASM Shipping Ltd of India v. TTMI Ltd of England](#) [2006] EWCA Civ 1341 serves as a further illustration of the English court's reluctance to interfere in English seated arbitrations.

In brief the facts of the underlying case were as follows. Shortly before a hearing a third arbitrator was appointed to the tribunal. On the first day of that hearing a witness gave evidence, who, it transpired, had previously been the target of a disclosure application made by the new arbitrator as counsel in an unrelated case, but in which the third arbitrator had been instructed by the same instructing solicitors who were to cross examine the witness in this case. An objection on the grounds of apparent bias was made, and the arbitrator refused to rescue himself. ASM maintained their objection but continued to participate in the proceedings. After a period of time an award was rendered finding for TTMI. ASM applied to the court alleging a serious irregularity under section 68 of the Arbitration Act.

At first instance ([2005] EWHC 2238 (Comm)) Morison J. concluded that the arbitrator had been wrong not to rescue himself, but despite that irregularity, chose not to set aside the arbitration award. The

judge's reason for doing so being that ASM had failed to act promptly upon the conclusion of the hearing and had accordingly waived their rights to complain. As Morison J. put it "*Owners were faced with a straight choice: come to the courts and complain and seek his removal as a decision maker or let the matter drop. They could not get themselves into a position whereby if the award was in their favour they would drop their objection but make it in the event that the award went against them. A 'head we win and tails you lose' position is not permissible in law.*"

Morison J refused permission to appeal under section 68(4) of the Arbitration Act. As it is settled law (see *Henry Boot Construction v Malmaison Hotel* [2001] 1 QB 388) that such a refusal is final, ASM were forced to run two novel arguments in order to attempt to grant the Court of Appeal jurisdiction to hear an appeal. The first ground was that by finding that ASM had waived its rights, Morison J. had actually failed to reach a decision under section 68 (relying on *Cetelem SA v. Roust Holdings* [2005] EWCA Civ 618, where a judge had made an order which he had no jurisdiction to make, and accordingly the Court of Appeal had held that no decision was made that could amount to a 'decision under the section'). The second argument relied on a breach of ASM's right under the European Convention of Human Rights (the "Convention") which guaranteed a fair hearing before an impartial tribunal. ASM argued that once Morison J. had established that the tribunal was not impartial he would himself be in breach of the Convention if he did not remedy the situation.

The Court of Appeal quickly disposed of the *Cetelem* point – finding that Morison J had been called upon to decide whether or not to grant, and that whichever way that decision went it was still a decision under section 68. Equally, the judge's refusal of permission to appeal was likewise a qualifying decision. The Court was also unpersuaded on the human rights point noting:

- (i) The judge had allowed the parties a public and impartial hearing on the matter;
- (ii) Per the case of *English v. Emery Reimbold & Strick* [2002] EWCA 605 a decision was only subject to challenge under the Convention if the procedure in question was unfair, and the Convention did not concern itself with the merits of the resulting decision; and
- (iii) it is settled Convention jurisprudence that in any event a national court retains a margin of appreciation as to whether an award tainted by apparent bias must be set aside or not.

Accordingly, the Court of Appeal found that they had no jurisdiction to grant permission to appeal and the application was accordingly dismissed. It is submitted that this holding is fully in line with the court's stated aim to limit the ability of parties to reopen arbitration awards before the courts and escape from the finality for which they have contracted.

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France



Jean-Pierre Harb,
Baker & McKenzie SCP, Paris

In a recent decision rendered by the French *Cour de Cassation* (Supreme Court) a panel of three arbitrators was held to be at fault for having failed to issue an award, or obtain an extension of time to render an award, within the four-month period provided for by the parties' agreement to arbitrate, and the panel was ordered to pay damages. Cass. 1^{re} civ., 6 déc. 2005, 03-13.116, FS P+B, Juliet et a. c/ Castagnet et a.: Juris-Data n° 2006-031141 at <http://legifrance.gouv.fr>.

The French Code of Civil Procedure provides that in domestic arbitration, if the time limit for rendering an award expires, the parties can agree on an extension of time or the competent court may grant an extension at the request of one of the parties or at the request of the arbitral tribunal.

The award in question was rendered in 1990, 22 days after the four-month deadline agreed by the parties for the issuance of the award. More than seven years later, in June 1997, the Court of Appeal of Rennes set the award aside because of the arbitrators' failure to issue their award by the deadline. Two years later, the other party (in whose favour the award was originally made) sued the three arbitrators because of the damages it suffered as a result of the annulment. The court upheld the claim, holding the arbitrators liable for a total of 130,000 Francs. On December 10, 2002, the Court of Appeal of Angers reversed this judgment, on the basis that the parties were also responsible for letting the arbitration period lapse. The December 6, 2005 decision of the French Supreme Court overruled the Court of Appeal of Angers and remanded the case to a different Court of Appeal in accordance with French civil procedure.

The French Supreme Court held that arbitrators have an "*obligation de résultat*" – an absolute obligation to achieve a result, in this case rendering a decision within the time period set forth in the arbitration agreement – and that they had failed to fulfill this obligation. Thus, due to a 22-day delay, the arbitrators were held liable for damages ten years after they rendered the award.

This decision of the French Supreme Court might create a *frisson* of caution in the small arbitrators' community – and even arbitral institutions, which are generally cautious with respect to arbitral appointment. However, it is unlikely that this isolated decision will affect the general tendency of the France Courts to *favor arbitri*. The success of France as a renowned place for arbitration results from the convergence of several important factors including the 1981 Decree on international arbitration which even today remains one of the most progressive international arbitration laws. French courts have also played an important role by instituting and encouraging a sound tradition of non-interference of courts in the arbitral process, including enforcement. Within this context, even if other decisions confirm the December 6, 2005 decision, it is expected that arbitration in France will continue to thrive.

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India



**V.Inbavijayan,
Advocate/International Arbitrator**

A Supreme Court Bench consisting of two Judges is unable to reach a unanimous decision on whether a two-tier arbitration agreement providing for an internal appeal process is invalid under the [Indian Arbitration and Conciliation Act 1996](#), in [Centrotrade Minerals & Metals Inc v. Hindustan Copper Ltd](#) Civil Appeal No. 2562 of 2006 [Arising out of S.L.P. (C) No. 18611 of 2004] and Civil Appeal No. 2564 of 2006 [Arising out of S.L.P. (C) No. 21340 of 2004] (2006(2) Arb.LR 547 (SC)).

The parties entered into a contract in 2004 which contained an arbitration agreement in the following terms:

All disputes or differences whatsoever arising between the parties out of, or relating to the construction, meaning and operation or effect of the contract or the breach thereof shall be settled by arbitration in India through the arbitration panel of the Indian Council of Arbitration in accordance with the Rules of arbitration of the Indian Council of Arbitration.

If either party is in disagreement with the arbitration result in India, either party will have the right to appeal to a second arbitration in London, U.K. in accordance with the rules of conciliation and arbitration of the International Chamber of Commerce in effect on the date hereof and the results of this second arbitration will be binding on both the parties. Judgment upon the award may be entered in any Court of Jurisdiction.

A dispute arose and the losing party in the first arbitration commenced an ICC arbitration in London, where it prevailed. The award in the second arbitration was challenged on various grounds, including that the underlying arbitration agreement was invalid.

One of the Supreme Court Judges (S.B. Sinha J) held that an arbitration agreement of this nature was inconsistent with the scheme of the 1996 Act. Under Section 36 of the Act a domestic award that has not been challenged within a certain time, becomes capable of being executed and enforced in the same way as a decree of the Indian Courts. Once the first award became a decree of the court, the second arbitrator had no power to set the decree aside or to annul its effect. A subsequent award that sought to set aside an award that had already become a decree under Section 36 of the Act, would therefore be contrary to the legislative policy in India. Thus the arbitration agreement was contrary to public policy. Applying the decision of the Supreme Court in *Oil & Natural Gas Corporation Ltd v Saw Pipes*

(MANU/SC/0314/2003), S.B. Sinha J concluded that such an arbitration agreement was void. It follows that an award founded on such an agreement would not be enforced.

However, the Second Judge, Tarun Chatterjee, J., considered that the clause was valid. He concluded that Section 34 of the Indian Act did not curtail party autonomy and that the 1996 Act does not prohibit parties from entering into a two tier arbitration such as that contemplated by the parties in this case. Judicial authority that preceded the 1996 Act clearly permitted arbitral appeal procedures and there was nothing in the 1996 Act that changed the law on that matter. The parties had agreed to that they may appeal the domestic award to a foreign ICC arbitration. On the construction of the arbitration agreement it was clear that the parties agreed to be bound by the outcome of the second arbitration.

As the Honorable Judges disagreed with each other, the case will be referred for consideration by a newly constituted larger bench of the Supreme Court.

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Ireland



John P. Gaffney
O'Flynn Exhams

The decision in *Marshall -v- Capitol Holdings Limited* (Irish High Court, July 21, 2006) confirms that there is no requirement under Irish law that an arbitrator's award in domestic proceedings needs to be reasoned, unless he has agreed to do this in his terms of appointment.

The case involved an application for an order to set aside a partial and final award of an arbitrator in proceedings involving a claim against a tour operator, and/or to grant leave to have the matter re-tried in a court of competent jurisdiction. Among a number of interesting issues dealt with, the Irish Court confirmed that it is the practice in Ireland for an arbitrator in domestic arbitration proceedings to give no reasons for his award.

In the earlier case of *Vogelaar v. Callaghan* ([1996] 2 I.L.R.M. 226) the High Court upheld the validity of the practice of an arbitrator in not giving a reason:

"The plaintiffs having had the opportunity to ask the arbitrator to state his award in the form of the opinion of the court or, alternatively, to give reasons for what he had done, it is now not open to them to complain that this was not done."

The court further pointed out that if an arbitrator is asked to give reasons after the reference has been made he is not obliged to do so.

In *Keenan v. Shield Assurance* [1998] I.R. 89, the Supreme Court (McCarthy J.), elucidated on the rationale for this rule:

“It ill becomes the court to show any readiness to interfere in such a process; if policy considerations are appropriate as I believe they are in a matter of this kind, then every such consideration points to the desirability of making an arbitration award final in every sense of the term. A reasoned award provides a possibility that a losing party may apply to the court to have the award set aside on the basis of ‘an error on the face of the award’.”

The position under Irish domestic arbitration law contrasts with that pertaining in relation to international arbitration law in Ireland. The Arbitration (International Commercial) Act 1998 gives effect to the UNCITRAL Model Law, Article 31(2) of which provides that an international arbitration award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms.

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Malaysia



Seah Ban Kiat (MCI Arb), Consultant

James R Knowles (Malaysia) Sdn Bhd

Malaysia joins the UNCITRAL Model Law family with the coming into force of the [Arbitration Act 2005, Act 646](#) (the new Act) which received the Royal Assent on December 30, 2005 and became effective from March 15, 2006.

The new Act of 2005 closely follows the UNCITRAL Model Law and is welcomed as modernising Malaysia's arbitration law. The 1952 Act continues to apply only to arbitrations commenced prior to March 15 2006, and the new Act will apply to all other arbitrations.

The 2005 Act establishes a bifurcated regime for domestic and international arbitrations. It also enacts several additions to the Model Law, including detailed provisions for the award of interim measures by the tribunal, the availability of interim measures from the Courts and for consolidation of arbitral proceedings. Like the old Act, the new Act still allows parties to apply to the Court for the determination of questions of law insofar as domestic arbitrations are concerned. For international arbitrations however, more autonomy has been given, although parties are at liberty to “opt-in” more court supervision if required.

The new Act is an important development to the laws of Malaysia and is expected to attract more international arbitrations to Malaysia. Malaysia will be on par with the rest of the world as the new Act draws closer to the law which the international commercial community is familiar with. It is therefore commendable that Malaysia has now joined the Model Law arbitral community.

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Portugal



**Nuno Ferreira Lousa,
Linklaters, Lisbon**

The April 20 2006 decision of a court of second instance in Portugal addressed the grant of interim or conservative measures relief by arbitrators in the course of arbitration proceedings. Following existing Portuguese case law the court found that since arbitrators do not have *jus imperii* they may not grant such relief.

Portuguese State courts are very conservative in admitting the possibility of arbitration tribunals granting interim measures. At this stage, and taking the existing case law into consideration, a Portuguese court is only ever likely to recognize and enforce interim measures awarded by an arbitration tribunal if such relief does not involve the exercise by the tribunal of *jus imperii* and only where the arbitration agreement (or the relevant rules) specifically mandate the tribunal to grant interim relief. This conservative approach reflects the scepticism the State courts still have towards the use of arbitration for dispute resolution in Portugal.

Despite this conservative approach by State courts, arbitration is becoming increasingly popular in Portugal and is adopted for some of the existing major disputes, particularly in the areas of construction and shareholders' disputes. One of the main reasons for the increased interest in arbitration in Portugal is the inadequacy of the Portuguese judicial system to deal with lengthy and complex litigation (the same judge may have to deal simultaneously with a complex and high-value construction dispute and thousands of judicial proceedings of small value).

An amendment to the Portuguese Arbitration Act has been the subject of some debate in Portugal for the last few months, as a result of the increasing demand for arbitration. One of the issues under consideration is the need for arbitration tribunals to have competence to grant interim measures.

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Romania



**Barbara Steindl, Crina Baltag,
Schönherr Rechtsanwälte, Vienna/Bucharest**

In the past years, Romania has undertaken a process of adapting its legislation to the continuous changes in the economic and political environment mainly determined by the accession of Romania to the European Union, scheduled for January 2007.

Romania is not a Model Law country. However, its arbitration law is modern. Arbitration is mainly regulated by Book IV of the Romanian Civil Procedure Code ('RCPC'), which contains provisions for both domestic and international arbitration. The provisions under RCPC include the *separability*, *competence-competence* and *due process* principles of arbitration. According to RCPC, the arbitration clause must be in writing. In case of domestic arbitration, the arbitrators must be Romanian citizens; in case of international arbitration, the foreign party may appoint arbitrators having foreign citizenship. Pursuant to RCPC, it is not only the place of arbitration which determines whether an arbitration is domestic or international. RCPC expressly states that although the place of arbitration is located in Romania, an arbitration procedure is considered international if the dispute is generated by a legal situation containing a foreign element.

Institutional arbitration. Following the modern trends in international arbitration, the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania introduced two new forms of arbitration: (i) accelerated arbitration procedure for the recovery of receivables and (ii) electronic arbitration. More details on these can be found at <http://www.e-arbitraj.ro/index.htm>.

Law on mediation. The Romanian Parliament, on 16 May 2006, adopted a law on mediation (the 'Law on Mediation'). Mediation is defined as an alternative method for amicable settlement of disputes between parties, with the assistance of a specialized mediator. Many disputes between parties, including disputes related to consumer protection issues, may be settled by mediation (the Law on Mediation e.g. refers to any conflicts related to civil, commercial and family law as well as criminal law cases filed upon a preliminary criminal complaint or criminal matters in which parties can reach a settlement, pursuant to the applicable law). The mediators must be authorized by the Mediation Council and must meet the requirements set forth by the Law on Mediation. The Law on Mediation is currently in the course of implementation as the Mediation Council is still in the process of being established. Settlements achieved by such mediation proceedings may be authenticated by a public notary or inserted in a court

decision, in case the dispute settled by mediation is pending in front of a court. If settlements have been authenticated or embedded in a court decision, they constitute enforceable titles.

Investment arbitration. Romania is a long standing member of the ICSID Convention and the Energy Charter Treaty. In addition, Romania has entered into numerous bilateral investment treaties on 12 October 2005. An arbitral tribunal appointed by the International Centre for Settlement of Investment Disputes rendered the first decision in a case against Romania (Noble Ventures, Inc vs. Romania, Case no. ARB/01/11; the award can be found on <http://ita.law.uvic.ca/documents/Noble.pdf>). The award in favour of Romania brings further clarification to the interpretation of umbrella clauses contained in bilateral investment treaties. Four other ICSID cases against Romania are still pending (EDF (Services) Limited vs. Romania (Case no. ARB/05/13); Ioan Micula, Viorel Micula and others vs. Romania (Case no. ARB/05/20); Spyridon Roussalis vs. Romania (Case no. ARB/06/1) and Rompetrol Group N.V. vs. Romania (Case no. ARB/06/9).)

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Ukraine



Taras Tertychnyi
Magister & Partners, Kyiv, Ukraine

During the past several years Ukraine has seen major changes in the legal framework regulating national and international arbitration, which triggered further development of the arbitration institutions and increased awareness of arbitration issues among the government and business community. These developments towards arbitration heralded a more consistent approach towards arbitration which has become more easily accessible for the international practitioner.

Domestic arbitration tribunals (*treteiskyi sud*, also referred to as third-party court) are non-governmental, independent authorities which are established in accordance with the *2004 Law On Third-Party Courts* ([Annotation](#)). The domestic law applies to civil and commercial disputes between legal and/or natural persons who are residents of the Ukraine (with the exception of certain matters, e.g. disputes with the state, local government authorities and state companies; family relations; insolvency etc). Domestic awards are final and binding and may be enforced directly by the Ukrainian courts, with limited grounds for appeal or challenge, dealing mostly deal with procedural, formal and jurisdictional defects in the award.

The adoption of the Law has generated rapid development of the domestic tribunals. Currently, there are more than 70 permanent (institutional) tribunals operating in Ukraine. In 2005, a national self-regulating

association of the arbitration tribunals was established – the Arbitration Chamber of Ukraine. Its website, among other information, also provides for a [registry of domestic arbitration tribunals](#) (only in Ukrainian).

International arbitration in Ukraine is governed by the [Law of Ukraine On International Commercial Arbitration](#) (implementing the UNCITRAL Model Law). The enforcement procedure is governed by the new *Code of Civil Procedure (2005)*. Certain new material norms relating to the choice of jurisdiction and conflict of laws are contained in *Law on International Private Law (2005)*. Some relevant rules are scattered around other procedural codes and laws.

Only two arbitral institutions may administer international commercial arbitration proceedings under Ukrainian law: the International Commerce Arbitration Court (ICAC); and the Maritime Arbitration Commission (MAC). Both function under the auspices of the Ukrainian Chamber of Commerce and Industry. These institutions enjoy jurisdiction over disputes involving legal entities engaged in foreign trade activity, and other forms of international economic relations. The term "economic relations" is interpreted very broadly, covering almost any aspect of international business, including investments, financing deals, intellectual property agreements, construction, concessions etc. ICAC and MAC awards are final. Arbitration awards may be enforced by the Courts after a recognition and enforcement procedure similar to that for any foreign arbitral award. The *Rules* and the *Schedule of fees of the ICAC* and the MAC may be found on the [site of the Ukrainian Chamber of Commerce and Industry](#).

Recognition and enforcement of foreign awards is governed by the *Code of Civil Procedure*. Ukraine is a party to the [1958 New York Convention](#) subject to the reciprocity reservation. Accordingly, in order to recognize and enforce a foreign arbitral award, it is usually sufficient to refer to the provisions of the Convention. Enforcement proceedings should be brought within 3 years of the date of the award. The request should be lodged with a local ordinary court of the debtor's domicile. If the debtor is not domiciled in Ukraine or his domicile is unknown, the request is lodged with a local ordinary court for the place where the debtor has assets. The court's ruling on issues of enforcement may be appealed to higher courts, but foreign arbitral awards are still more likely to be enforced in the Ukraine than foreign court judgements.

It is also noteworthy that the Ukraine has entered into about 40 bilateral investment treaties, each containing a multi-tier dispute resolution clause, including arbitration under the [1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States](#) which has been in force in the Ukraine since 2000. Ukraine is also a party to the [1994 Energy Charter Treaty](#), which has been in force since 1999.

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United Arab Emirates



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On 13 June 2006, the President of the UAE (Shaikh Khalifa Bin Zayed Al Nahyan) issued Federal Decree No. 43 of 2006 and UAE became the latest state to ratify its accession to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (“NY Convention”). The ratification instrument was deposited with the United Nations on 2 August 2006 and came into force 90 days later, that is, on 31 October 2006.

The NY Convention provides for direct recognition and enforcement of arbitral awards rendered in any of the 138 convention states with limited grounds, set out in articles iv and v, on which recognition and enforcement of a foreign arbitral award may be refused. The theory, thus, is that an agreed set of international principles are uniformly applied to the recognition and enforcement of international arbitral awards rendered in any of the NY Convention states.

The practice, however, may be different as far as the UAE is concerned, at least in the short to medium term. Although the effect of Federal Decree No. 43 for 2006 is that the NY Convention becomes part of UAE law, ratification of the NY Convention was not accompanied by separate legislation addressing the historic arbitration regime in the UAE. It has thus been left to the UAE Courts to interpret any conflict that may consequently arise - and potential for conflict there is plenty.

Historically, the first port of call for a party seeking to enforce a foreign arbitral award in the UAE, were articles 235 & 236 of Federal Law No. 11 of 1992 (“**Civil Procedures Law**”) which in theory permit enforcement of foreign arbitral awards but in practice have been used by the Courts to deny enforcement on grounds such as lack of reciprocity and assumption of UAE court jurisdiction (pursuant to articles 20 & 24 of the Civil Procedures Law) over the original dispute. It thus remains to be seen how far the wholesale incorporation into law of an international treaty such as the NY Convention would persuade UAE courts to adopt a less strict and more commercial interpretation to the enforcement of international arbitration awards.

One of the perceived short term benefits of UAE’s accession to the NY Convention is that the UAE is likely to become an increasingly attractive place to arbitrate international disputes with UAE courts keen to uphold the validity of arbitration clauses (subject to the strict procedural formalities having been complied with) and UAE international awards receiving a much warmer reception in NY Convention states. However, in the absence of a dedicated arbitration law the UAE will continue to be the ugly sister as an arbitral dispute resolution forum for non-Gulf Cooperation Council parties, due essentially to the lack of effective and reliable supervisory jurisdiction of the UAE courts over the arbitration process itself.

An interesting future sideshow would be the approach adopted by the courts in the Dubai International Financial Centre (“**DIFC**”) which under Sir Anthony Evans as the Chief Justice are likely to be much more pragmatic and commercial in the interpretation and application of the NY Convention against the backdrop of Part V of the much more comprehensive common law based DIFC Law No. 8 of 2004 (“**Arbitration Law**”).

UAE legislation is issued in Arabic with no official English translations. Unofficial translation of Federal Decree No. 43 of 2006 can be obtained from Kaashif (kaashif@jsalaw.com). DIFC legislation is issued in English and available at www.difc.ae

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ARBITRATION EVENTS

Further information about forthcoming international arbitration conferences, symposia and seminars may be found in the International Arbitration Planner at <http://www.arbitrationevents.com/> or http://www.iaiparis.com/agenda_v2.asp?id=upevents

Date	Details	Venue
16 - 17 Dec 2006	30 Years UNCITRAL Arbitration Rules Everlasting Response to Emerging Users' Needs; Cairo Regional Centre for International Commercial Arbitration (CRCICA) www.crcica.org.eg	Cairo
19 - 21 Jan 2007	ASA / DIS Workshop DIS – German Institution of Arbitration ASA - Swiss Arbitration Association www.arbitration-ch.org	Badenweiler, Germany
22 Jan 2007	Take the Witness - Cross Examination in International Arbitration Juris Conferences LLC www.jurisconferences.com	Paris
25 Jan 2007	ASA Below 40 Half-day conference Details to be confirmed	Geneva
26 Jan 2007	ASA Conference 2007 Details to be confirmed	Geneva
26 Jan 2007	Rethinking the Federal Arbitration Act -An Examination of Whether and How the Statute should be Amended. Saltman Center for Conflict Resolution www.law.unlv.edu/saltman_Events.html	Las Vegas
26 Jan 2007	The UCP 600 ICC Events events@iccwbo.org	Paris

Date	Details	Venue
29 Jan - 01 Feb 2007	PIDA/ Negotiating, Drafting and Managing International Contracts and Conflict Resolution ICC Events http://www.iccwbo.org/events/id994/index.html	Paris
31 Jan 2007	The Tenth Annual Review of the Arbitration Act British Institute of International and Comparative Law This conference is being held by the Institute to mark the 10th anniversary of the Act's entering into force. http://www.biicl.org/events/view/-/id/52/	London
11 - 17 Feb 2007	International Arbitration, Mediation and Litigation Centre for International Legal Studies manuela.wedam@cils.net	Steamboat Springs, United States of America
16 - 17 Feb 2007	Symposium Entwicklungen und Praxis der internationalen Schiedsgerichtsbarkeit ICC Austria www.icc-austria.org	Vienna
19 - 22 Feb 2007	PIDA/ International Commercial Arbitration ICC Events www.iccbwo.org/events/id994/index.html	Paris
21 - 23 Feb 2007	ICDR's 5th Annual Miami International Arbitration Conference International Centre for Dispute Resolution www.adr.org	Miami
25 - 28 Feb 2007	ICC International Commercial Dispute Resolution ICC Events	Scottsdale, United States of America
26 Feb - 02 Mar 2007	16th International Congress of Maritime Arbitrators (ICMA XVI) International Congress of Maritime Arbitrators enquiries@lmaa.org.uk	Singapore
26 Feb - 02 Mar 2007	The 12th Geneva Global Arbitration Forum Geneva Post Company S.A. www.ggaf.ch	Geneva
01 Mar 2007	YIAG Symposium London Court of International Arbitration www.lcia.org	Madrid
02 Mar 2007	10th World Arbitration Day International Bar Association www.ibanet.org	Madrid
02 - 03 Mar 2007	Gemeinschaftsveranstaltung der DIS und Verlag C.H. Beck: Persberger Schiedstage 2007 German Institution of Arbitration dis@dis-arb.de	Konigswinter/Bonn Germany
03 Mar 2007	LCIA European Users' Council Symposium London Court of International Arbitration www.lcia.org	Madrid

Date	Details	Venue
19 - 25 Mar 2007	4th Annual Willem C Vis East International Commercial Arbitration Moot Chartered Institute of Arbitrators www.cisgmoot.org	Hong Kong
30 Mar - 05 Apr 2007	14th Annual Willem C Vis International Commercial Arbitration Moot Pace Law School - Institute of International Commercial Law www.cisg.law.pace.edu/vis.html	Vienna
01 - 02 Apr 2007	Third Annual Leading Arbitrators' Symposium on the Conduct of International Arbitration Juris Conferences LLC www.jurisconferences.com	Vienna
19 - 20 Apr 2007	DIS Vortragsveranstaltung und Mitgliederversammlung (DIS 40) German Institution of Arbitration dis@dis-arb.de	Dresden
19 - 20 Apr 2007	Tools and Tactics in International Commercial Arbitration Cornerstone Seminars www.cornerstone-seminars.com	Paris
23 - 26 Apr 2007	PIDA/ International Commercial Arbitration International Chamber of Commerce events@iccwbo.org	Paris
26 - 28 Apr 2007	IBA Maritime and Transportation Law Arbitration Day German Institution of Arbitration www.dis-arb.de	Hamburg
27 Apr 2007	The UCP 600 International Chamber of Commerce www.iccwbo.org/events/id994/index.html	Paris
27 - 29 Apr 2007	Spring Conference Chartered Institute of Arbitrators acbeurobranch@hotmail.com	Trier, Germany
10 - 11 May 2007	Multiple Parties, Multiple Problems: A Symposium UTCLE customer-service@utcle.org	The Hague
11 May 2007	8th Investment Treaty Forum Public Conference British Institute of International and Comparative Law http://www.biiicl.org/events/view/-/id/118/	London
11 - 13 May 2007	LCIA European Users' Council Symposium LCIA - London Court of International Arbitration www.lcia.org	The Grove, United Kingdom
17 - 18 May 2007	Conference on Dispute Resolution and the Energy Charter Treaty ICSID www.encharter.org	Washington, Wallis and Futuna Islands

Date	Details	Venue
29 May - 14 Jun 2007	2007 International Arbitration Summer Session Washington College of Law www.wcl.american.edu/arbitration/	Washington, DC
31 May - 01 Jun 2007	Leading Arbitrators' Symposium on the Conduct of International Arbitration Juris Conferences LLC www.jurisconferences.com	NY
01 - 03 Jun 2007	IAMA National Conference 2007 - New Horizons in ADR Institute of Arbitrators and Mediators Australia www.iama.org.au	Adelaide (Glenelg), Australia
07 - 09 Jun 2007	Introduction to Arbitration AIJA www.aija.org	Helsinki

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NEW YIAG MEMBERS

We are delighted to announce the recent arrival of Sofia Calliope Marijke

