

June 2013



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Brainstorming on the future of Mediation in Belgium
LOCATION: Palace of Justice, Salle des Audiences Solennelles,
Plechtige Zittingszaal , Place Poelaert 1
DATE: June 27th, 2013

European Mediation Training for Practitioners of Justice
LOCATION: Campus Brussel - T'Serclaes/Hermes/Erasmus
Stormstraat 2 Rue de l'assaut 1000 Brussels, Belgium
DATE: August 19th-31st, 2013

For further Information please visit our website:
<http://arbitration-adr.org/activities/>

You can also join the Association for International Arbitration,
along with our 5,000 other contacts and add us on [LinkedIn](#)

EMTPJ 2013

Is it possible to follow one mediation course in civil and commercial matters and become accredited in seventeen mediation centers ?Yes it is! Follow the EMTPJ course from the 19th-31st of August in Brussels and become a recognized mediator both within and outside Europe.

This year our centers which recognized the EMTPJ are located in China, the United Kingdom, Germany, Italy, Spain, Greece, Cyprus, Belgium, Romania, Slovakia and the Ukraine.

The EMTPJ is an intense, informative and highly practical course which brings together attendees from all over the world. It consists of 100 hours training with an assessment included.

Key training areas are: Conflict theory and mediation, theory and practice of EU law and Mediation Acts, analytical study of conflict resolutions, theory and practice of contract law in Europe, EU ethics in mediation, interventions in specific situations, the stages in the mediation process ,the function of party-experts and party counsels in civil and commercial mediation and International mediation.

Visit our website www.emtpj.eu for details on how to register.

Brainstorming on Mediation in Belgium

27th of June 2013 (1.45pm – 5pm), Palace of Justice in Brussels (Court of Appeal, Poelaertplein 1, Brussels 1000)

For the very first time, all mediation stakeholders (Minister of Justice, Belgian Federal Mediation Commission, Belmed, High Council for Justice, Judiciary, Bar Associations, Lawyers, Legal Aid associations, B2B and B2C organizations, ADR providers and Ombudsmen) will come together to partake in an open discussion in order to identify a common agenda for the improvement of mediation in Belgium. Why everyone should attend:

- Mediation is now acknowledged as an important tool to: (1) reduce judicial backlog, (2) reduce crisis effects, (3) increase social harmony, (4) enhance access to justice and (5) enhance legal aid. This event will touch upon current issues in this context.
- The brainstorming will play a significant role in the (r) evolution of mediation in Belgium and is therefore not to be missed out on by the media;
- It is a perfect opportunity for networking with key market players and policy makers;
- We will begin to film a documentary on the evolution of mediation in Belgium at this event.

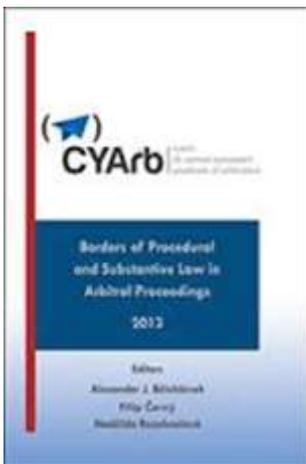
The brainstorming will be followed by a networking reception. The participation fee is 25 Euros and free of charge for former EMTPJ Alumni and AIA members.

For more information: <http://arbitration-adr.org/activities/?p=conference&a=upcoming#43>

We look forward to seeing you on the 27th of June!

Book Review: Borders of Procedural and Substantive Law in Arbitral

Proceedings
by Olivia Staines



Borders of Procedural and Substantive Law in Arbitral Proceedings, edited by *Be-lohlávek, Černý* and *Rozehnalová*, constitutes volume three of the Czech (& Central European) Yearbook of Arbitration.

The Czech Yearbook is divided into four parts. The first contains articles which consider issues such as: the scope of mandatory provisions of procedural and substantive law, standard of proof in International Commercial arbitration, principles like ex

Aequo et Bono, Amiable compositeur, Lex Arbitri and Lex Mercatoria as well as examine the cause of action in In-

vestment arbitration.

In addition, attention is paid to the determination of substantive law by international commercial arbitration in Russian law, ICAC rules and arbitration practice.

The second is divided into two sections. Section A provides analysis of the current case law of constitutional courts and General Courts on Arbitration. It looks into the case-law of Hungary, Poland and the Czech and Slovak Republic. Section B focuses on the case-law of arbitral tribunals and decisions within the jurisdiction of the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic. The third and fourth parts are composed of a book review on *Be-lohlávek's Act on Arbitration Proceedings and Enforcement of Arbitration Awards: A commentary and news and reports*.

In light of this, an advantage that this book provides is its various perspectives on the matter at hand. The comparison of the case-law in Part 2, section A and B is particularly impressive. We therefore recommend this volume to all those in favour of a comprehensive, in depth yet concise read on Procedural and substantive Law in Arbitral Proceedings.

For more information on how to purchase this book, please visit the Jurispub website:
http://www.jurispub.com/cart.php?m=product_detail&p=13847

Lawsuit Filed against Secretary General of ICSID by Yaroslava Sorokhney

In the recent ICSID case RSM Production Corporation v. Central African Republic (ICSID Case No. ARB/07/2), which concerned RSM's investment in an oil exploration concession in the Central African Republic, Mr. Jack J. Grynberg, CEO of RSM Production Corporation (RSM), filed a lawsuit against the World Bank Group, ICSID and the Secretary general of ICSID Meg Kenear in the federal courts of the District of Columbia.

The ICSID Tribunal rendered a decision in the above mentioned case and the investor initiated annulment proceedings. On February 20th, 2013 the ICSID ad hoc Committee issued its decision on the application for annulment, which was negative for RSM Production Corporation.

However Mr. Grynberg states that there was an undisclosed conflict of interest by one of the members of the ad-hoc Committee. Moreover, he states that Secretary-General refused to register his request on the ground that in her opinion there was no conflict of interest. Mr. Grynberg also wrote an open letter to the Chairman of the ICSID, Dr. Jim Yong Kim. In his letter Mr. Grynberf asks Mr. Kim to give answers on important questions like:

"1) Is it acceptable that decisions made by ad-hoc Committees whose members turn out to have conflicts of interest should be immune from review?

2) Is it acceptable that the appointment of ad-hoc Commit-



tee members who turn out to have failed to comply with their duty to disclose conflicts of interest in breach of the requirements of impartiality and independence should be immune from review?

3) Is it acceptable that the Secretary-General of ICSID exercises a judicial power to block a prima facie conflict of interest from being reviewed by an impartial and independent ad hoc Committee? In purporting to exercise such power is the Secretary-General acting within their authority and, if so, from where does that authority derive?

4) How do you select and appoint members of an ad-hoc Committee?

So far there have been no reactions to Mr. Grynberg's letter. Ultimately, only time will tell how events will unfold.

Singapore International Arbitration Centre Introduces New Rules and New Governance Structure

by Paul Frankenstein

On April 1st, 2013, the Singapore International Arbitration Center (SIAC) enacted new arbitration rules and introduced a new governance structure.

The new governance structure introduces a Court of Arbitration to complement the existing Board of Directors. The SIAC Court of Arbitration will take over the arbitration-related functions of the old board—specifically, the appointment of arbitrators, ruling on challenges to arbitrators and case administration. The Board of Directors will continue to oversee the development of SIAC's business operations.

The SIAC Court of Arbitration consists of sixteen leading arbitration practitioners from around the world, lead by Dr. Michael Pryles as President, ably backed up by Mr. Cavinder Bull SC and Mr John Savage as Vice Presidents.

The new rules themselves have not changed substantially from the last revision, in 2010. This new set of rules marks the third time in six years that the SIAC rules have been revised. The bulk of the changes in the 2013 rules are essentially adaptations of the 2010 rules to SIAC's new governance structure.

For example, under the old 2010 rules, the Chairman of the Board handled many arbitrator appointment matters. Under the 2013 rules, those functions are now handled by the President of the SIAC Court of Arbitration. Similarly, under the 2010 rules, challenges to arbitrators were decided by a committee of the Board of Directors. Under the 2013 rules, challenges to arbitrators are decided by the SIAC Court of Arbitration.

In addition to these transfers of function, the 2013 SIAC rules retroactively modify the 2010 and 2007 SIAC Rules to allow the SIAC Court to handle the administrative functions that

had been assigned to the SIAC Board of Directors.

Another significant change is a clarification to the rules to make it clear that SIAC has the ability and capacity to deal with non-contractual disputes; i.e. it is now clear that SIAC has the capability to administer investor-state arbitrations that arise out of investment treaties.

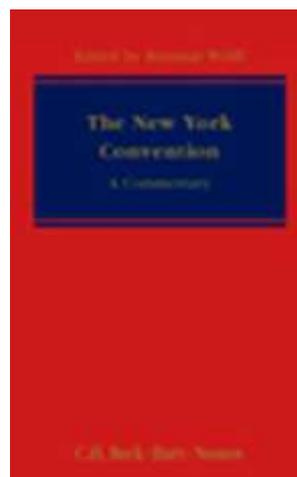
Additional changes to the rules include providing SIAC with the flexibility to modify time limits in the proceeding if matters require it and explicitly providing arbitral tribunals with the authority to consider arguments that are raised outside of written submissions.

These new rules do not mark major changes to the SIAC rules, unlike previous editions. For example, the 2007 SIAC rules implemented a great number of changes, including an ICC-like review of the arbitration award. The 2010 SIAC rules rolled back the review of the awards while adding an emergency arbitrator facility, among other changes.

Despite the relative lack of changes in the 2013 SIAC rules, there are still a few gray areas that could be expanded on. For example, the 2013 SIAC rules provide relatively little guidance with regard to multi-party arbitrations, unlike the 2012 ICC Rules or the upcoming 2013 HKIAC Rules. With this in mind, it would not be surprising to see yet another revision to the SIAC rules being issued within the next few years.

Book Review: New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards Commentary

by Yaroslava Sorokhtey



A New Commentary on the NY Convention with regard to the recognition and enforcement of foreign arbitral awards has been published by HART. The NY Convention is the most important treaty in the field of international commercial arbitration, with its 148 current Member States. This commentary is an important input into the field of arbitration, because only a uniform interpretation of the provisions of the convention gives an adequate answer to whether there are grounds to refuse enforcement and recognition of a particular

award.

The commentary sites the Convention article by article and gives reasonable interpretation supported by case law and respected scholar opinions. It also includes 5 annexes at the end which are very useful for the reader. The annexes include translations of the NY Convention into 6 languages, statutes of



the NY Convention (including member states, dates of signature, reservations and declarations), UNCITRAL Recommendation, travaux préparatoires and the texts of complementing conventions (Geneva Convention and Protocol, European Convention and Panama Convention).

This book will therefore be a great asset to students and young professionals involved in the field of international commercial arbitration and dealing with recognition and enforcement of foreign arbitral awards.

For further information about the book and where to purchase it, please visit the website of Hart Publishing, <http://www.hartpub.co.uk/books/details.asp?isbn=9781849461962>

What's New about Party Representation in Arbitration?

by Yaroslava Sorokhtey

Recently, the International Bar Association developed new Guidelines on Party Representation in Arbitration for parties and their representatives to determine their conduct during the proceedings. The work group tried to find a uniform set of ethical standards of professional conduct in arbitral proceedings, to develop a compromise between common law and civil law countries.

The Guidelines are based on the main principle that a party's representative should not cause unnecessary delay or expenses; the Guidelines also emphasized that it is forbidden to use tactics to obstruct the arbitral proceedings.

The Guidelines are divided into 9 chapters composed of: a preamble, definitions, the application of guidelines, party representation, communications with arbitrators, information exchange and disclosure, witness and experts and finally the last one – remedies for misconduct.

The Preamble explains the purpose of its Guidelines, the necessity of developing such rules and on what basis. The Guidelines are aimed at making the proceedings more transparent and can be adopted in whole or in part by the parties or arbitral tribunal.

In the "definitions" chapter, several important terms are explained. For example, the definition of "misconduct" is provided: *breach of those rules or any other action that the Tribunal deems to be against the duties of Party Representative. The term "knowingly" is also clarified : actual knowledge of the fact or the question.* However, it has been argued that the term "false" should also be clearly defined.

For example, when a Party's Representative is deleting parts of the witness statement – it is unclear whether this constitutes a breach of the guidelines. On the one hand, the witness statement in this scenario is still technically correct and therefore might not fall into the "false" category. On the other hand, such an intentional "exclusion" of random parts of the witness statement can obviously twist the facts of the case and mislead the tribunal.

Regarding the application of the Guidelines – it is stated that the parties can decide whether they will apply the rules or not. The Guidelines do not mention what the tribu-

nal should do where there is an absence of an agreement between the parties to apply those rules. The tribunal can apply the rules after consultation with the parties but such rules must not replace other mandatory rules.

Chapter three is dedicated to the topic of party representation, which is an important thing in arbitral proceedings since it is closely connected to the opportunity to present ones case. In several countries it is even the constitutional right of each individual –to choose one's own representative, even though in most cases it concerns litigation (especially criminal proceedings).

Nevertheless, while talking about arbitral proceedings it is still very important to give the party opportunity to choose its own counsel to represent its case properly. Guidelines 4-6 provide the Arbitral Tribunal with the opportunity to exclude counsel in some cases – for example when there are changes in party representation during the proceedings and a conflict of interest exists between newly appointed counsels and one of the members of the arbitral tribunal.

In this case the Tribunal, when taking such a complicated and delicate decision, should make sure that justifiable circumstances exist to disqualify the counsel in order to avoid possible annulment of the award on the grounds that the party did not have an opportunity to present its case. This was an issue in the case of Hrvatska Elektroprivreda d.d. v. Republic of Slovenia (ICSID Case No. ARB/05/24).

Crucially, the Guidelines also focus on witness statements. Accordingly, the principles of "candour and honesty" are key when it comes to counsel ethics .Guideline 24 examines how to prepare witnesses testimony. Unfortunately, it seems that it only takes a common law approach (allows help with drafting and allows for mock-cross-examinations), it is unclear how those rules should work in civil law countries, where, for example, cross-examination is not common practice.

The Guidelines are very useful because they are specialized solely on arbitral proceedings, while other existing ethical rules usually concern litigation proceedings. The Guidelines clearly identify the conduct of the parties and counsels during arbitral proceedings and help clients to become aware of the ethical norms existing in arbitration.

Some commentators have argued that the guidelines should be more specific – for example Guideline 26 states that a tribunal can sanction counsels for misconduct (allows apportioning of the costs), but it does not clarify how it should be done or technicalities of the procedure itself. Moreover, some fear that the rules may be conflicting with national rules (especially in civil law countries).

Ultimately, the Guidelines developed by IBA should promote transparency of arbitral proceedings, highlight ethical standards for counsels and ensure time-efficiency and fairness.

Vrije University of Brussels and the Association for International Arbitration Present: A Postgraduate Program in **International Business Arbitration**

The Department of Law at VUB University Brussels, together with the Association for International Arbitration has successfully run an intensive postgraduate program specialized in international business arbitration for four years.

It gives the opportunity to participants to gain knowledge in international commercial arbitration and other forms of alternative dispute resolution such as mediation, negotiation and conciliation.

In addition, the program offers a course in international trade and investment arbitration law. The program is designed in a way that allows students to participate in seminars and lectures whilst applying theory to practice as often as possible. For example, one of the courses in the program is Mock Arbitration – where students imitate real arbitral proceedings. Lecturers from AIA teach Comparative International Arbitration, Alternative Dispute Resolution and International Trade and Investment Dispute settlement.

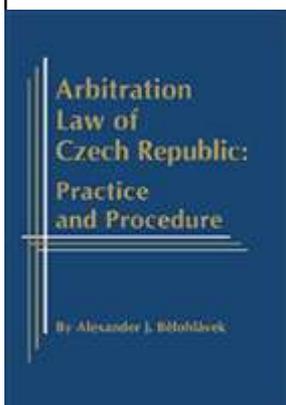
The quality of the classes delivered, the networking events and the field work opportunities provided, will ensure that graduates of this degree have access to prestigious job opportunities.

Students will have developed and enhanced skills to work as arbitrators, arbitration counsels, in-house dispute resolution specialists and legal counsel within Government.

For more information about admissions please follow the link below:

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

Book Review: Arbitration Law in Czech Republic Practice and Procedure by Yaroslava Sorokhtey



A new book on Arbitration Law in the Czech Republic written by Alexander J. Bělohávek was recently published by Juris Publishing Inc. It gives a detailed overview of the arbitration process in the Czech Republic. It includes the whole procedure from the drafting of an arbitration agreement to recognition and enforcement of arbitral awards.

The book elaborates on both theoretical legal analysis and practical guidance in relation to all the essential features of arbitration in the Czech Republic. Each chapter provides a detailed analysis on a topic related to

arbitration.

The book is divided into 8 parts. The first part looks at General Provisions and explains the scope of the Czech Republic Act on Arbitration and Enforcement of Arbitral Awards. It also focuses on arbitrability in connection with Section two of the Act and gives some examples from case law.

In addition, it speaks about arbitrability and arbitration agreements in connection with the Section 2(4) of the Czech Arbitration Act; including ECHR decisions together **with the Commission's Decisions and compares it with the Slovak Arbitration Act.** It talks specifically about the form, terms and conclusion of an Arbitration Agreement, compares Czech and Slovak Arbitration Acts and gives examples from the case law of ECJ, ECHR and Slovak national courts.

The second part is dedicated to Arbitrators – eligibility requirements, acceptance of appointment, obligation of confidentiality, appointment of the arbitrators by the Court, challenge procedure and describes the conditions for establishing permanent arbitral institutions according to section 13 of Czech Arbitration Act.

The third part explains arbitral proceedings in detail from their commencement to the stage of enforcement and examines the application of the Czech Code of Civil Procedure (Section 30 in particular).

The fourth part is dedicated solely to the annulment of arbitral awards by the court and the termination of pending enforcement proceedings. Then the author considers the list of arbitrators administered by the ministry, subject-matter and territorial jurisdiction of the courts.

This book is recommended to those who provide legal advice on Czech arbitration proceedings to their clients. It would also be an asset for anyone interested in arbitration and civil litigation in the Czech Republic, especially to foreign lawyers, businessman, foreign students or other individuals involved in arbitration there and who are willing to learn more about its practical aspects.

For further information about the book and where to purchase it, please visit the website of Juris Publishing, http://www.jurispub.com/cart.php?m=product_detail&p=13718

AIA Provides Training in Arbitration in Bahrain

We would like to announce that GICO (Gulf International Conferences Organizing Company W.L.L) together with the AIA, will hold a training conference on the 1st -2nd of July, 2013 in Manama (Bahrain).

Mr. Johan Billiet will speak about the key arbitral institutions in Europe, such as the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), The International Court of Arbitration and London Court for International Arbitration (LCIA). He will discuss and compare the rules of each institution and will go through each stage of the

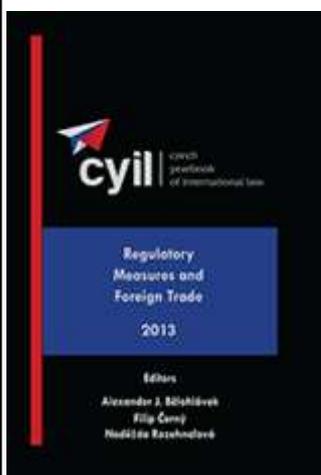




procedure from the commencement of arbitration until enforcement and recognition of the award. The seminar will cover: an overview of the Arbitral Institution, Written Communications and timing, commencement of Arbitration, the Arbitral Tribunal, the arbitral proceedings, awards and costs. It will conclude with an overview of other important provisions included in the institutions rules (eg: modified time limits, waiver and exclusion of liability)

Book Review: Regulatory Measures and Foreign Trade 2013

by Olivia Staines



Regulatory Measures and Foreign Trade edited by Belohlávek, Černý and Rozehnalová, constitutes volume four of the Czech Yearbook of International Law.

Crucially, foreign trade is the driver of the global economy. In light of the fact that it has become harder to keep tabs on international organizations and governments, the implementation of regulatory measures has become increasingly important.

The Czech Yearbook provides acumen into the weaknesses of such measures in investment law on both a European and a global scale. In addition, the Yearbook delves into foreign trade measures on a domestic level.

The book is divided into three main sections. The first is comprised of nine articles which examine topics such as: Protecting Regulatory measures in Investment Treaty Law, the EU and Foreign Investment and effective enforcement of sanctions for market abuse in the EU. The second encompasses five book reviews, amongst them: the UNIDROIT *Principles of International Commercial Contracts 2010*, Belohlávek's *Arbitration in the European Countries* and Stehlik's *Application of National Procedural Rules in the context of EU law*. The third contains news and reports.

A particularly interesting article is Shmatenko's *Regulatory Measures through Plain Packaging of Tobacco Products in light of International Trade Agreements*. The article considers whether the introduction of plain packaging is compatible with WTO law. In the past Canada, Britain, Lithuania, Uruguay and Australia have taken steps to introduce plain packaging. However, Australia is the first country to have formally presented a Tobacco Plain Packaging Act in 2011.

Consequently, Philip Morris Asia Ltd commenced arbitration proceedings under UNICITRAL rules against the Australian Government. It claims that: the law's provisions which prohibit trademarks would violate IP Law as well as Australia's obligations under the Australia- Hong Kong BIT.

Schmatenko argues that plain packaging does not violate WTO law under TRIPS, GATT and the TBT Agreement but is a balancing act between regulatory measures and international trade agreements. Thus he concludes that Governments should establish regulatory measures and implement WHO FCTC Guidelines into domestic legislation as plain packaging laws to uphold public health.

In sum, we highly recommend the Czech Yearbook as a resource for those who wish to know more on international trade and have a thorough compilation of a variety of interesting articles on the subject. A major strength of the publication lies in the fact that it caters to law, economics and politics graduates alike.

For details on how to publish this book, please visit the Jurispub website:

http://www.jurispub.com/cart.php?m=product_detail&p=13848

AIA Recommends to Attend

Save the Date! International Commercial Arbitration Training
20th -22nd of June, 2013
Kyiv, Ukraine



European
Arbitration
Chamber

On the 20th-22nd of June 2013, the President of AIA, Mr. Johan Billiet will provide training for young practitioners in the field of Arbitration. This will be a 3-day qualifying course specifically in International commercial arbitration, which will be held in Kyiv, Ukraine. The training is organized by the European Arbitration Chamber (Brussels, Belgium).

The training program is specifically designed for: practicing lawyers whose specialization is in alternative dispute resolution and those who are interested in learning more on commercial arbitration whilst gaining a professional qualification in dispute resolution. Participants will receive a certificate entitled: international arbitrator of the International Commercial Arbitration Court under the European Arbitration Chamber (Brussels, Belgium).

Participants of the training will gain theoretical knowledge and skills, which are necessary for their professional arbitration activity.

To find more information about the training please email secretary@chea-taic.be

