The Commercial, Shipping & Investment

ARBITRATION WATCH

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1. NEWS

Independent Arbitral Appointments Committee presented by the Scottish Arbitration Centre

A wide range of nationalities and expertize combine together in the Arbitral Appointments Committee of the Scottish Arbitration Centre. Among the members there are prominent names like David Carrick (UK), Teresa Cheng (China), Kaj Hobér (Sweden), Elie Kleiman (France) or Thomas Halket (USA). It is through the Committee that the Centre expects to assure commercial organizations that they will get the most suitable arbitrator for the job.

The London Maritime Arbitrators Association elects president

Christopher Fyans has been elected as President of the London Maritime Arbitrators Association at the Fifty-First Annual General Meeting held at The Baltic Exchange. The Committee is formed by C. Fyans (President), J. Tsatsas (Past President), R. Gaisford (Past President), C. Aston, B. Buchan, M. Hamsher, P. O'Donovan and B. Williamson. The Honorary Secretary of the Association is Ian Gaunt.

ICSID has created the Panels of Conciliators and Arbitrators

Pursuant to Article 13(2) of the ICSID Convention, the Chairman of the ICSID Administrative Council, Mr. Robert B. Zoellick (President of the World Bank), announced the new lists of Chairman's designations to the ICSID Panels for Conciliators and Arbitrators. The Chairman can designate 10 arbitrator and 10 conciliators of different nationalities to each Panel. The Panel of Arbitrators include, for instance: Teresa Cheng (China), Allain Pellet (France), Lucy Reed (US) and Tinuade Oyekunle (Nigeria), among others. At the Panel Conciliators we may find Luiz Olavo Baptista (Brazil), Roberto Echandi (Costa Rica) and Jeswald Salacuse (US), among others.

CIArb publishes "Costs of International Arbitration Survey 2011"

The survey was first launched by the Chartered Institute of Arbitrators (CIArb) in 2010 to gather data to inform parties, legal counsels and arbitrators about the costs of international commercial arbitration. It was completed by practising arbitrators and lawyers from five continents and includes information on 254 arbitrations conducted between 1991 and 2010. The results were analysed and presented at an international conference organized by CIArb in September 2011 in London. Amongst other results, the survey shows that "50% of claimants with claims under £1m spent less than £250,000 on their own costs, the other 50% spent more" and also "that the average length of an arbitration is between 17 and 20 months".

Venezuela's seizure policy to drive investment away

The Venezuelan Confederation of Industries (Conindustria) asserts that the Venezuelan government has seized nearly 990 companies between 2002 and 2011. The study reflects that far from diminishing, government's seizures have increased. In 2011 401 companies have been expropriated by Venezuelan authorities, which is 41 percent more than the 284 companies expropriated

questions of jurisdiction shall be directly decided by the arbitral tribunal (in the 1998 Rules, these issues were decided by the Court). Yet, the Secretary General may still refer some matters to the Court for its decision, pursuant to Article 6.4. (iii) *Submission of the draft Award*: As provided for in Article 27 (b), after the closing of the proceedings the arbitral tribunal shall inform the Secretariat and the parties of the date by which it expects to submit the draft Award to Court for approval. This provision amends Article 22.2 of the 1998 Rules, which allows the arbitral tribunal to indicate the 'approximate date' by which the drat Award would be submitted. (iv) *Written Notifications or Communications*: While email is included as a new means of notification and communication, older facsimile transmission, telex and telegram are removed. (v) *Multiple parties, multiple contracts and consolidation*: Articles 7 to 10 include new provisions with regard to joinder of additional parties, such joinder is subject to Articles 6.3 – 6.7 and Article 9. In conformity with Article 9, claims arising out or in connection with more than one contract may be addressed and decided in a single arbitration proceeding, irrespective of whether such claims originate in different arbitration agreements. Pursuant to Article 10, two or more arbitrations under the Rules, may be consolidated into a single arbitration proceedings, should the parties present a request to that effect. The request shall be considered by the Court and, if granted, consolidation shall be made to the arbitration that commenced first.

VDCC and GMAA conclude a cooperation agreement

The Verband Deutscher Schifffahrts-Sachverständiger (VDSS) (*Association of German Shipping Experts*) and the German Maritime Arbitration Association (GMAA) have announced their intention to cooperate on a closer basis in future. Besides other areas of cooperation, the GMAA members will be able to call upon the expertise of the VDSS if technical expert reports are required in the framework of arbitration proceedings. The organisations will hold an expert workshop on speeding up arbitration proceedings. "The VDSS and the GMAA have the common interest of promoting Germany as a location for maritime services where disputes are settled in a competent manner", stated Mr. Holst, VDSS chair.

Bangladesh to seek rights over resources in Bay up to 400-460 nautical miles from the coast

On 25 August, the United Nations heard Bangladesh's claim on the continental shelf in the Bay of Bengal. On February 25 Bangladesh initiated international arbitration proceedings before the Commission on the Limits of the Continental Shelf (CLCS) following disputes with neighbouring countries India and Myanmar. Bangladesh's claim on the Bay of Bengal continental shelf extends up to 400-460 nautical miles (850 km) from the coast. Bangladesh asserts it should have total rights over the undersea natural resources within this area.

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2. LAWS & TREATIES

Arbitration Act amended in Malaysia

The Arbitration (Amendment) Act 2011 which was recently passed in Malaysia has come into force as of July 1, 2011 thus now providing means for securing a claim by way of ship arrest where admiralty disputes are to be resolved via arbitration. Prior to this 2011 Amendment, a series of High Court decisions (namely those related to *The Vinta, The Norma Splendour* and *The Swallow*) have held that the admiralty jurisdiction of the High Court cannot be invoked in arresting a vessel as security for an award that may be made in arbitration proceedings save in very limited circumstances where financial in capacity of Defendant is proven.

Liechtenstein's accession to the New York Convention

Liechtenstein has ratified the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"). Its accession took effect on 7 July 2011 and the Convention entered into force locally on 5 October 2011. Liechtenstein becomes the 146th State party to the New York Convention.

Japan and Taiwan sign Investment Agreement

The agreement was signed on 22 September. Due to the particular diplomatic relations between Japan and Taiwan, the deal was reached between Taiwan's East Asia Relations Commission and the Interchange Association, Japan, which serves as a contact organization with Taiwan. The main purpose of the agreement is to allow companies from both