MAYER | BROWN

August 2019

Global International Arbitration Update

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Firm Updates

2019: Dany Khayat (Paris) was ranked as "*Arbitration Specialist*" in Who's Who Legal ("**WWL**") 2019. Alejandro Lopez Ortiz (Paris) and Yu-Jin Tay (Singapore) were both ranked in the WWL category "*Future Leaders – Partners*" and José Caicedo (Paris) and Rachael O'Grady (London) were also ranked in the WWL category "*Future Leaders – Non partners*". Alain Farhad (Dubai) was ranked as an "*Expert in Arbitration*" by WWL.

16 January 2019: Gustavo Fernandes de Andrade (Brazil) was appointed to the list of arbitrators of the Chamber of Conciliation, Mediation and Arbitration of São Paulo.

February 2019: Gustavo Fernandes de Andrade (Brazil) was ranked for the 5th consecutive year by Chambers Global 2019 as a recognized practitioner within Dispute Resolution: Arbitration, and was appointed to the list of arbitrators of the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada.

February 2019: The Leader's League ranked the International Arbitration practice of Tauil & Chequer Advogados in association with Mayer Brown highly recommended in Brazil.

14 February 2019: Mayer Brown's Paris team, and Dany Khayat (Paris) individually, were ranked in Band 4 of Chambers Global 2019 (France). Alejandro Lopez Ortez (Paris) was ranked as Foreign Expert for Spain and Central America in Chambers Global 2019 (France).

March 2019: Menachem Hasofer, Thomas So (both Hong Kong) and Yu Jin Tan (Singapore) were recognised as leading individuals in Legal 500 Asia Pacific 2019.

1 March 2019: Soledad O'Donnell (Chicago) has been named chair of the United States Council for International Business ("**USCIB**") Arbitration Subcommittee's Midwest region. The USCIB is the US affiliate of the International Chamber of Commerce ("**ICC**").

28 March 2019: Raid Abu-Manneh and Rachael O'Grady (both London) have been named in the inaugural edition of The Legal 500's International Arbitration Powerlist UK, which showcases 200 of the UK's leading arbitration practitioners.

April 2019: Alejandro Lopez Ortiz (Paris) was included in the list of arbitrators of the Center of Arbitration and Conciliation of Portugal.

2 April 2019: Gustavo Fernandes de Andrade (Brazil) was nominated member of the Commission on Arbitration and ADR of the International Court of Arbitration of the ICC.

May 2019: Benchmark Litigation Asia Pacific honored Yu-Jin Tay (Singapore) as a "Dispute Resolution Star" for International Arbitration in Singapore.

May 2019: Mayer Brown's Singapore arbitration team won the FT's most innovative dispute resolution team in Asia 2019.

May 2019: Mayer Brown's Paris arbitration team was ranked as "Excellent" (Band 2) by Décideurs.

June 2019: Alejandro Lopez Ortiz (Paris) was included in the list of arbitrators of the Center of Arbitration of the American Chamber of Commerce of Peru.

1 June 2019: Alain Farhad joined the firm as a partner in the Dubai office and head of the dispute resolution practice in the United Arab Emirates. Alain is highly experienced acting as counsel and arbitrator in international arbitration proceedings involving complex commercial contracts, construction projects and investment protection treaties. Alain is highly regarded for his work in the Middle East and he represents clients from a wide range of sectors including oil and gas, infrastructure and real estate. He is a member of the ICC UAE Arbitration Commission Steering Committee and the ICC Commission on Arbitration and ADR.

18 June 2019: Dany Khayat (Paris) has been named, for the second consecutive year, on Jeune Afrique's list of the top 50 business lawyers who advised on large deals and disputes in French-speaking countries in Africa in 2018, rising to 14th in 2018 from 43rd in 2017.

July 2019: Sally Davies (London), Raid Abu-Manneh (London), Menachem Hasofer (Hong Kong), Jonathan Hosie (London) and Michael Regan (London) were listed as "Expert" in Who's Who Legal Construction 2019. Sally Davies (London) was also named as one of the "Global Elite Thought Leaders". Kwadwo Sarkodie (London) and Venna Cheng (Hong Kong) were recognized as Future Leaders - Partners in Who's Who Legal Construction 2019.

1 August 2019: Ulrich Helm, leading litigator and arbitrator, joined the Firm's Litigation & Dispute Resolution practice in Frankfurt. Ulrich was previously a partner and Head of the German Infrastructure, Energy, Resources and Projects practice at Hogan Lovells. He represents contractors, sponsors, suppliers and project companies in complex arbitration and litigation matters. His practice, which covers a range of sectors, is particularly focused on infrastructure, energy, oil and gas and plant-construction disputes.

Legal Updates

NEW HONG KONG LAW ON THIRD PARTY FUNDING COMES INTO FORCE

1 February 2019: Hong Kong enacted the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance in July 2017 ("**TPF Legislation**"). However, the operational sections were only brought into effect on 1 February 2019, following the formal issuance of the Code of Practice for Third Party Funding of Arbitration ("**Code of Practice**") following a period of public consultation on 7 December 2018. As one of the world's most comprehensive codes of practice for third party funding, it sets key standards for funding arbitration – including regarding the funding agreement, capital adequacy requirements of funders, and provisions dealing with conflicts and disclosure.

The TPF Legislation does not expressly provide for sanctions for breaching the Code of Practice. However, any failure to comply may be taken into account by any court or tribunal, possibly resulting in the funding agreement being held void for reasons of public policy, or in cost sanctions. Some aspects of the Code of Practice, especially in relation to the costs of arbitration services provided in Hong Kong, may have limited application to non-Hong Kong arbitrations.

THE ICC'S REPORT ON CONSTRUCTION INDUSTRY ARBITRATIONS

12 February 2019: The ICC published "The ICC Commission Report – Construction Industry Arbitrations: Recommended Tools and Techniques for Effective Management". This report is primarily intended for arbitrators who do not have much experience in construction arbitrations under the ICC rules and emphasises the importance of expeditious and cost-effective procedures in construction arbitrations.

AUSTRALIA AND INDONESIA SIGN THE IA-CEPA WHICH INCLUDES ISDS PROVISIONS

4 March 2019: Indonesia and Australia signed the Comprehensive Economic Partnership Agreement ("**IA-CEPA**"), a free trade agreement that liberalizes investment laws in order to promote trade between the two countries. The IA-CEPA will come into force once both countries have followed their respective domestic treaty making processes.

The IA-CEPA includes an Investor-State Dispute Settlement ("**ISDS**") mechanism which will provide investors from Australia and Indonesia with access to an independent arbitral tribunal to resolve disputes under the IA-CEPA. However, investors will not be able to bring claims relating to (i) measures implemented to protect or promote public health and (ii) investments obtained through corruption or other illegal conduct.

ICSID RELEASES SECOND DRAFT OF PROPOSED UPDATED RULES

15 March 2019: To modernize its arbitration proceedings and make them timely and cost efficient, while also addressing due process, ICSID released the second version of its working paper proposing modified ICSID Rules. Some of the main modifications to the Rules include:

- mandatory electronic filings and time limits;
- an obligation for parties to disclose the existence of a third party funder;
- an expanded arbitrator declaration;
- expedited times to request the disqualification of an arbitrator;
- express recognition of the power of the tribunal to order security for costs;
- new expedited timelines for the issuance of awards; and
- the prerogative of the parties to agree to a new expedited proceeding.

ICSID expects to send a proposed text to its members by the summer of 2019, with a view to voting the amendments by October 2019 (alternatively by October 2020).

THE IBA PUBLISHES TECHNOLOGY RESOURCES FOR ARBITRATION PRACTITIONERS

18 March 2019: The International Bar Association ("**IBA**") Arb40 Subcommittee has published Technology Resources for Arbitration Practitioners, a list of currently available technological resources that can be used to augment or assist an international arbitration. The aim is to improve practitioners' access to modern technology to promote more efficient, cost-effective, secure and dynamic arbitrations.

THE NETHERLANDS PUBLISHES FINAL VERSION OF ITS MODEL BIT WITH NOVEL PROVISIONS

22 March 2019: The Dutch Parliament published a revised Netherlands Model Investment Agreement ("**the New Model BIT**"), with the intention to use it to renegotiate the Netherlands' BITs with States outside the European Union.

The New Model BIT places greater emphasis on the right of State parties to regulate investors' activities and includes new definitions of "investor" and "investment". It also modifies the standards of protection – for example, by explicitly listing what amounts to a breach of the Fair and Equitable Treatment standard - and by explicitly excluding from the jurisdiction of investment tribunals claims arising out of investments made through fraud or similar bad faith conduct amounting to an abuse of process.

The New Model BIT allows Dutch investors to commence ICSID arbitration against States that are not a party to the ICSID Convention under the ICSID Additional Facility Rules. It also envisages the possibility of establishing a multilateral investment court for ISDS which would exclude independent arbitral tribunals from resolving disputes under this treaty.

AUSTRALIA AND HONG KONG SIGN NEW TRADE AGREEMENT CONTAINING ISDS PROVISIONS

26 March 2019: Hong Kong and Australia signed the Australia-Hong Kong Free Trade Agreement ("**A-HKFTA**") which covers a wide variety of areas and includes a commitment from Australia to liberalise its arbitration, conciliation and mediation services. It contains ISDS procedures allowing claims under the UNCITRAL Arbitration Rules, with additional bespoke provisions applicable to certain types of disputes.

A-HKFTA also includes the standard investor protections with some limitations in relation to claims regarding Australian's measures to control tobacco and aspects of its public healthcare system. A-HKFTA does not prevent either country from adopting measures to protect, *inter alia*, public health and the environment, provided they are not applied in an arbitrary or discriminatory manner, or used to disguise restrictions on trade or investment.

THE LMAA PUBLISHES ITS 2018 STATISTICS

29 March 2019: the London Maritime Arbitrators Association's ("**LMAA**") latest statistics revealed a slight increase in references from 1,496 in 2017 to 1,561 in 2018, and, across that period, a 3% increase in arbitrator appointments, and a 6% increase in awards rendered.

THE LCIA PUBLISHES ITS 2018 ANNUAL CASEWORK REPORT

1 April 2019: The London Court of International Arbitration's ("**LCIA**") 2018 Annual Casework Report shows a record number of arbitrations were referred to the LCIA under the LCIA Rules, with a significant rise in disputes in the banking and finance sector (29% of all cases), a sector traditionally reluctant to embrace international arbitration.

The report showcases the international nature of LCIA proceedings and the institution's diversity achievements - for example, non-English seated arbitrations doubled since 2017, and non-British arbitrators were selected by the LCIA Court 57% of the time (compared to 20% of the time when it was left in the parties' hands). The figures also show an increased number of applications for joinder and consolidation, as well as increased recourse to emergency arbitrator and expedited tribunal formation procedures.

ICC TASK FORCE'S FINAL REPORT ON EA PROCEEDINGS REVEALS SUCCESS OF EA PROVISIONS

1 April 2019: The ICC Task Force on Emergency Arbitrator ("**EA**") proceedings was set up in 2015 to analyze all aspects and issues that arose in EA applications made until 30 April 2018, to identify emerging trends and to offer practical guidance and insight on such proceedings.

In its final report published in April 2019, the Task Force reported, *inter alia*, on the growing popularity of EA proceedings (10 applications in the first two years versus 70 applications in the last four years) and on the prompt and timely manner in which proceedings were dealt with.

A key finding of the Task Force was that relief had been granted only in a minority of ICC EA applications, which is consistent with the nature of interim relief. It found that enforcement of EA decisions did not raise particular concerns as the decisions were either complied with voluntarily or had the support of local courts and arbitral tribunals.

VIAC PUBLISHES RECOMMENDED MODEL ARBITRATION CLAUSE FOR RUSSIAN PARTIES

1 April 2019: The Vienna International Arbitral Centre ("**VIAC**") of the Austrian Federal Economic Chamber has recommended that where Russian parties are involved, parties who wish to agree to arbitration administered by the VIAC, should not only refer to the VIAC rules in their arbitration clauses but they should also expressly refer to VIAC itself.

Despite the Russian Supreme Court's ruling, in December 2018, that the ICC model arbitration clause was valid and enforceable, VIAC continues to recommend the use of its model arbitration clause when Russian parties are involved, in order to omit any residual risk arising from the earlier Russian Supreme Court case (dated 26 September 2018). In that case, it refused to enforce an ICC award on the basis that the ICC model arbitration clause only referred to the ICC Rules but not to the "ICC International Court of Arbitration".

HONG KONG AND CHINA AGREE ARRANGEMENT FOR INTERIM MEASURES IN ARBITRATION

2 April 2019: The Supreme People's Court of the People's Republic of China and the Hong Kong Government signed an agreement regarding interim measures in aid of arbitration proceedings. Parties to arbitration in Hong Kong will now be able to apply for interim measures to mainland courts, and arbitral parties in mainland China can do the same in Hong Kong courts, provided the arbitrations are administered by an approved arbitral institution. The lists of approved institutions in both jurisdictions are yet to be finalised.

This arrangement is significant as it makes Hong Kong the only jurisdiction where parties to an arbitration can apply directly to mainland Chinese courts, enhancing Hong Kong's favoured position in relation to international arbitrations relating to China.

AFRICAN CONTINENTAL FREE TRADE AREA AGREEMENT COMES INTO FORCE

2 April 2019: The African Continental Free Trade Area Agreement ("**ACFTA Agreement**") came into force when the Gambia's parliament became the 22nd nation in the African Union to ratify it. It creates a free-trade area which is expected to enhance intra-African trade by 52.3% annually, according to the United Nations Economic Commission for Africa.

The ACFTA Agreement also endorses the use of international arbitration within Africa, as Articles 6(6) and 27 of the Protocol on Rules and Procedures on the Settlement of Disputes expressly provide for arbitration as an alternative to a Dispute Settlement Body, which would be comprised of state representatives.

BREXIT AND UK MEMBERSHIP TO THE HAGUE CONVENTION

12 April 2019: In light of the second extension to the Article 50 period for the UK to leave the EU to 31 October 2019, the UK confirmed that accession to the Hague Convention is suspended until 1 November 2019. The UK has lodged its instrument of accession to Hague 2005 with the Hague Depositary to ensure that there is no gap in UK membership to the Hague Convention in the case of a "no deal".

There is however some uncertainty over whether the EU contracting states will apply Hague rules to enforce an English judgment where an exclusive English jurisdiction clause was agreed before the UK re-joins Hague, even if the clause was agreed when the UK was party to Hague due to its EU membership. This is referred to as the "change of status risk".

THAI ARBITRATION ACT AMENDMENT ALLOWS FOREIGN ARBITRATORS TO SIT IN THAI ARBITRATIONS

14 April 2019: An amendment to the Thai Arbitration Act came into force allowing foreign representatives and arbitrators to act in "*arbitrations conducted in Thailand by a Thai government agency*". Prior to this, a foreign arbitrator had to obtain a work permit to sit as an arbitrator in arbitration proceedings in Thailand, a process which was both difficult and time consuming. Foreign representatives and arbitrators now need to apply for a certificate from either the Thai Arbitration Institute or Thailand Arbitration Centre in order to be able to reside, and perform their duties, in Thailand during the estimated period of the arbitration.

ADGM COURTS ISSUE OWN LITIGATION FUNDING RULES

16 April 2019: Following a public consultation and review of existing frameworks and in response to the growing interest of third party funding in the Middle East region, the Abu Dhabi Global Market Courts issued its own Ligation Funding Rules ("**the ADGM Rules**").

The ADGM Rules expressly allow for third party funding and apply to Litigation Funding Agreements, as defined by section 225(2) of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015. These Regulations mandate the disclosure of third party funding to all other parties to the dispute.

The ADGM is an international financial centre that, unlike the DIFC, adopts English law, however the ADGM Rules follow the DIFC Courts' Practice Direction No. 2 of 2017 on Third Party Funding, which provides a framework for third party funding in claims in DIFC Courts.

HONG KONG ANNOUNCES FUNDING FOR DEVELOPMENT OF ELECTRONIC ARBITRATION PLATFORM

19 April 2019: At the International Dispute Resolution Conference 2019, Hong Kong's Chief Executive, Carrie Lam, announced that the Hong Kong Government was providing financial support for the development of an online negotiation and alternative dispute resolution platform: Electronic Business Related Arbitration and Mediation ("**eBRAM**").

eBRAM is scheduled to launch in the fourth quarter of 2019, and will be the first platform in the world facilitating both deal-making and dispute resolution online, thus providing a time and cost effective alternative for enterprises in Asia to face-to-face negotiation and dispute resolution. While parties will be encouraged to adopt Hong Kong Law, they are free to choose the laws of other jurisdictions. Parties can appoint a panel of lawyers to adjudicate their arbitration or mediation.

CAM-CCBC, THE LARGEST ARBITRATION CENTRE IN BRAZIL, APPOINTS ITS FIRST FEMALE PRESIDENT

22 April 2019: The Executive Committee of the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada ("**CAM-CCBC**") recently appointed Mrs. Eleonora Coelho as president of the institution, succeeding Mr. Carlos Suplicy de Figueiredo Forbes. This is the institution's first female president. Since its foundation in 1979, CAM-CCBC administered over 1,000 arbitrations amounting to US$15 billion in dispute.

HKIAC PERMITTED TO ADMINISTER CASES IN RUSSIA

25 April 2019: The Hong Kong International Arbitration Centre ("**HKIAC**") officially became the first foreign arbitral institution to be granted permission to function as a permanent arbitral institution under Russia's Federal Laws on Arbitration. As such, HKIAC will be able to handle disputes involving parties from, or arising from agreements to carry out activities in, special administrative regions of Russia, as well as certain corporate disputes.

This arrangement allows parties to a dispute arbitrated in Russia, administered by the HKIAC, to agree that the resulting award be final and binding under Russian Law. This has the potential to make HKIAC administered arbitrations an attractive option for Russian-related deals.

ICSID PUBLISHES "SPOTLIGHT ON CONTRACT-BASED DISPUTES AT ICSID"

30 April 2019: ICSID's article "Spotlight on Contract-based Disputes at ICSID" examined the data collected on contract-based disputes resolved at ICSID, and found that in the past ten years, about seven new contract-based cases have been registered every year. The distribution of cases by sector and by geography is varied, with the largest share of contract-based cases falling within the oil, gas, mining and electric sector and Sub-Saharan African countries featuring in half of all contract-based cases brought.

The article highlights the benefit of bringing contract-based claims at ICSID, in particular immunity from legal proceedings in the conduct of ICSID arbitration proceedings under the ICSID Convention.

ECJ FINDS INVESTMENT COURT SYSTEM UNDER EU-CANADA CETA COMPATIBLE WITH EU LAW

30 April 2019: In reply to the proceedings initiated by Belgium questioning whether the Investment Court System ("**ICS**") under the EU-Canada Comprehensive Economic and Trade Agreement ("**EU-Canada CETA**") was compatible with the autonomy of the EU's judicial system, the European Court of Justice ("**ECJ**") held that an international treaty which provided for the constitution of a court for the interpretation of such treaty was consistent with EU law. However, the sole power to bindingly interpret EU law is to remain with the ECJ. The EU-Canada CETA observed this limitation as only the interpretation of the agreement itself was transferred to the ICS.

The ECJ also found that the right of access to an independent and impartial court was respected, since it found that sufficient measures had been taken to ensure access to the ICS was financially affordable for small and mid-sized enterprises. It also confirmed that the ICS did not infringe the general principle of equal treatment since that principle did not require domestic investors to be granted the same legal remedies as foreign investors.

CRCICA PUBLISHES ITS 2018 CASE FIGURES

1 May 2019: The Cairo Regional Centre for International Commercial Arbitration's ("**CRCICA**") published figures showed a circa. 20% increase in the number of new cases filed in 2018. CRCICA's disputes related to various sectors, with the construction sector taking up the largest share of disputes with 19 cases in 2018, almost 25% of all cases.

CRCICA's diversity commitment is apparent from the fact that 17 non-Egyptian arbitrators, and 11 female arbitrators (two more than in 2017) were appointed in cases registered in 2018. Further, 13 arbitrators under 40 were appointed that year as co-arbitrators or sole arbitrators, a number of which were females as well.

EU SEEKS MANDATE TO MODERNISE ECT

1 May 2019: The European Commission ("**EC**") adopted a proposal for a Council Decision authorising negotiations to modernise the Energy Charter Treaty ("**ECT**"), in order to promote long-term energy cooperation. These negotiations aim to revise the provisions of the ECT to reflect modern investment standards. Modernisation has been sought on the basis that the case law of the ECT suffers from considerable inconsistencies and the list of approved topics for modernisation includes investment protection provisions and related definitions, pre-investment protection, transit, REIO, provisions related to dispute resolution and obsolete ECT provisions.

NEW DIAC FOUNDING STATUTE

2 May 2019: Decree No. 17 of 2019 (the "**New DIAC Statute**") came into force on this date, replacing the previous DIAC Statute which founded DIAC. The New DIAC Statute primarily relates to the structure of DIAC, such that DIAC's organisational structure now consists of:

- the DIAC board of trustees (who are appointed by the board of directors of the Dubai Chamber of Commerce and Industry);
- the DIAC executive committee;
- the DIAC Manager; and
- the DIAC administrative body.

The New DIAC Statute highlights the role of the board of directors of the Dubai Chamber of Commerce and Industry in appointing the DIAC board of trustees. Nevertheless, the handling of cases remains solely within DIAC.

Of particular interest is the fact that the New DIAC Statute also sets out a process for updating the DIAC Arbitration Rules. Under the New DIAC Statute, the process involves the executive committee making the relevant proposals to the board of trustees, which needs to be approved by the board of trustees in conjunction with the board of directors of the Dubai Chamber of Commerce and Industry. After this, the board of directors can submit the new DIAC Rules to the government for consideration, which may then lead to them being issued under a decree passed by the Ruler. This change may suggest further developments in the issuance of the long-awaited new DIAC Arbitration Rules, which were presented in draft form almost two years ago.

THE SCC PUBLISHES ITS 2018 FIGURES

7 May 2019: The Arbitration Institute of the Stockholm Chamber of Commerce's ("**SCC**") 2018 figures show an unprecedented increase in the average amount in disputes, from EUR 1.5 billion in 2017, to 13.3 billion in 2018, despite a decrease in registered cases in that period from 200 to 152. Of these, half were Swedish cases, whilst the other half were international disputes and 34% were registered under the SCC Rules for Expedited Arbitrations.

The figures reflected increased diversity: newly filed disputes involved parties from 43 countries and the number of female arbitrator appointments rose from 18% in 2017 to 27% in 2018. However, seats outside Sweden remain rare, and most arbitrators appointed in SCC cases commenced in 2018 were of European nationalities.

JAMS LAUNCH INTERNATIONAL ARBITRATION CENTRE

20 May 2019: JAMS officially opened its new International Arbitration Centres in New York and Los Angeles. The Los Angeles Centre is among the first international arbitration center in California, following the passage of legislation permitting non-California and non-US lawyers to participate in international arbitrations seated in California. California is expected to become an increasingly popular arbitral seat as a result of this new legislation.

SCC'S NEW DIGITAL PLATFORM FOR FILE SHARING AND COMMUNICATION

5 June 2019: Starting September 2019, all SCC arbitrations will be administered on the SCC Platform – a secure digital platform for communication and file sharing between the SCC, the parties and the tribunal. The SCC Platform is developed to improve efficiency and to provide a new level of cybersecurity for users.

VIETNAM INTERNATIONAL COMMERCIAL MEDIATION CENTER LAUNCHES IN HANOI

7 June 2019: Vietnam International Commercial Mediation Center ("**VICMC**"), the first of its kind, launched in Hanoi under a license of the Ministry of Justice.

VICMC aims to reduce the average commercial dispute settlement time in Vietnam from 250 days via the courts to between 1-7 days. In addition to mediation activities, VICMC will also perform its social responsibility through mediation training, study and promotion of mediation activities in Vietnam.

THE ICC RELEASES ITS DISPUTE RESOLUTION 2018 STATISTICS

11 June 2019: The ICC Dispute Resolution 2018 statistics revealed new record awards in 2018. Throughout the year, 2282 parties were involved in 842 arbitration cases in 135 countries, with newly registered cases representing an aggregate value of US $ 36 billion, and all pending disputes of US $ 203 billion.

The number of women appointed nearly doubled, and the number of women acting as president or sole arbitrator also increased as did the number of younger arbitrators. The statistics also showed the efficiency of the delay measures implemented by the ICC (enabling the ICC Court to lower arbitrators' fees for late awards), with the number of late awards dropping from 54% in 2016 to 38% in 2018.

SINGAPORE MINISTRY OF LAW LAUNCHES PUBLIC CONSULTATION ON ALLOWING APPEAL OF ARBITRAL AWARDS ON QUESTIONS OF LAW

26 June 2019: Singapore's Ministry of Law launched a public consultation, ending 21 August 2019, seeking views on proposals to amend Singapore's International Arbitration Act (Cap. 143A), the primary ones being:

- A new default nomination procedure for arbitrators in multi-party situations;
- Allowing parties to request the arbitrator(s) to decide on jurisdiction at the preliminary award stage;
- Providing arbitral tribunals and the Courts with powers to enforce confidentiality obligations in arbitration; and
- Allowing parties to opt in to an appellate mechanism allowing appeals to the Singapore High Court on narrow questions of law arising out of an award.

In addition, the consultation also seeks views on whether the Court should be empowered to order costs of the arbitration where an arbitral award has been successfully set aside.

Case Law Updates

STATE OF SÃO PAULO PORT-AUTHORITY PREVAILS OVER THE LIBRA GROUP

7 January 2019: The two-decades dispute between *Libra Terminais S.A., Libra Terminais Santos S.A.*, and *the Dock Companies for the State of São Paulo* ("**CODESP**") was settled by an award in favor of CODESP issued under the Arbitration Rules of the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada. The tribunal unanimously found the insolvent Libra group liable in full for its financial obligations under lease agreements for two terminals at the Port of Santos in São Paulo state.

On 28 March 2019, the Libra Group announced to the market the termination of its activities at the Port of Santos, alleging that its clients decided to migrate to other operators at the port.

GERMAN SUPREME COURT REFUSES TO REOPEN SET ASIDE PROCEEDINGS AGAINST ACHMEA'S AWARD

24 January 19: In *Achmea B.V. v The Slovak Republic,* the German Federal Supreme Court ("**BGH**") rejected Achmea's complaint that the BGH decision in October 2018 to set aside the award it obtained against Slovakia in the ECT arbitration violated its constitutional right to be heard. The BGH reiterated that it had no doubts about setting aside the award based on the invalid arbitration clause in the underlying intra-EU BIT. A constitutional complaint to the German Federal Constitutional Court is now Achmea's only option, which we understand is already pending.

GERMAN STATE COURT CAN DETERMINE ADMISSIBILITY OF ARBITRAL PROCEEDINGS IF IN INTEREST OF PROCEDURAL EFFICIENCY

15 February 2019 (publication date): In *I ZB 21/18*, the German Federal Supreme Court decided that a party may request that state courts declare arbitral proceedings inadmissible (under s1032 paragraph 2 of the Code of Civil Procedure) even if the party itself initiated the arbitral proceedings. It held that it was not contradictory or abusive behaviour for a party to file an arbitration and then, before the tribunal was constituted, to request that state courts declare the proceedings inadmissible because the claimant had a valid interest in clarifying admissibility at an early stage.

The case highlights that abusive obstruction can only be assumed if a party initially asserts that the arbitration clause is valid or the state courts are competent and then claims the reverse is true later in the arbitration. Likewise, it would be seen to be abusive if the claimant claimed the arbitral proceedings were inadmissible after the award was issued.

ENFORCEMENT PROCEEDINGS CANNOT BE FILED IN BOTH CHINA AND HONG KONG AT THE SAME TIME, BUT THE LIMITATION PERIODS KEEP RUNNING

18 February 2019: In *CL v SCG* [2019] HKCFI 398, the Hong Kong Court of First Instance found enforcement of a Hong Kong arbitration award was time barred due to lengthy enforcement proceedings in mainland China which prevented enforcement proceedings taking place in Hong Kong.

This decision highlights a difficulty in the Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region: that while enforcement proceedings cannot be filed at the same time in both mainland China and Hong Kong, there is no provision suspending the limitation period for enforcement of the award in the jurisdiction in which enforcement is not being sought. This case provides a cautionary tale of procedural pitfalls that still remain in enforcing arbitration awards in mainland China; even those originating from Hong Kong.

ENGLISH COURT GRANTS INJUNCTION BLOCKING JORDANIAN PROCEEDINGS

1 March 2019: In *Aqaba Container Terminal (PVT) Co. v Soletanche Bachy France SAS* [2019] EWHC 471 (Comm), the English Commercial court granted the claimant a permanent anti-suit injunction to restrain Jordanian proceedings breaching an arbitration agreement, finding that the constitutional law claim under Jordanian law fell within the scope of the arbitration clause. Since Soletanche relied on the validity of that arbitration clause in earlier ICC proceedings (in which an

award was rendered), it was just to issue an anti-suit injunction to prevent Soletanche's breach of the arbitration agreement, there being no strong reasons not to do so. The case reminds us that English courts will grant anti-suit injunctions based upon an exclusive jurisdiction clause unless there are strong reasons not to do so and that it will do so even after an award has been published.

ENGLISH COURT GRANTS CIARB DISCLOSURE OF ARBITRATION DOCUMENTS

7 March 2019: In *Chartered Institute of Arbitrators v (1) B (2) C (3) D* [2019] EWHC 460, the English Commercial Court held, *inter alia*, that it was in the interests of justice that the Chartered Institute of Arbitrators ("**CIArb**") be granted access under CPR r.5.4C(2) to certain documents relating to an arbitrator's appointment, a hearing within the arbitration to consider whether he had a conflict of interest, and subsequent court proceedings seeking his removal as arbitrator, for the purpose of disciplinary proceedings against him.

The Court found that arbitral confidentiality can be overridden where disclosure is in the public interest. CIArb's public interest–namely, maintaining the quality and standards of arbitrators - extended beyond the parties' interests to the wider public using arbitration. The case reminds us that confidentiality is not absolute in commercial arbitration and that the English courts support the "*integrity*" of the "*quasi-judicial*" arbitral process.

INDIAN SUPREME COURT SETS ASIDE ARBITRATION CLAUSE REQUIRING A PRE-DEPOSIT TO COMMENCE ARBITRATION

11 March 2019: In *ICOMM Tele Ltd v. Punjab State Water Supply and Sewerage Board,* Civil Appeal No. 2713 of 2019, the Supreme Court of India struck down an arbitration clause which required a deposit of 10% of the amount claimed by the claimant to commence arbitration (which would have amounted to a large sum in this case). Under the clause, the deposit would only be returned if the claimant won, and only then in proportion to the amount awarded, with the balance forfeited to the other party.

The Supreme Court held that such a requirement was arbitrary, in that it had no real connection with its purported objective of the clause in preventing frivolous claims. Such a clause could lead to a situation where the claimant prevailed, but was not entitled to a return of substantial amounts of its deposit. The Supreme Court also found the clause to be both unreasonable, and an unreasonable deterrent against arbitration.

ENGLISH COURT GRANTS WFO SUPPORTING FOREIGN AWARD DESPITE LACK OF ENGLISH ASSETS

25 March 2019: In *ArcelorMittal USA LLC v Essar Steel Limited and others* [2019] EWHC 724 (Comm), the English Court upheld a worldwide freezing injunction ("**WFO**"), search orders and Norwich Pharmacal orders ("**NPO**") granted without notice in aid of enforcement of a foreign arbitral award. The case is a useful illustration of how the English court deploys WFO's in support of foreign awards against a debtor with no substantial assets in England and Wales. The court found that the debtor's attempted dissipation of assets itself merited intervention on the grounds this was an "*international fraud*", meaning that strong connecting factors with England were less important. NPOs were needed to ensure the effectiveness of the WFO, but the court could not confidently identify persons whose disclosure would be reliable and comprehensive, thus it granted NPOs directed at multiple sources.

ENGLISH COURT OUTLINES PROCEDURE WHEN SEEKING PERMISSION TO APPEAL ON A POINT OF LAW AND CHALLENGING AWARD FOR SERIOUS IRREGULARITY

25 March 2019: in *Merthyr (South Wales) Ltd v Cwmbargoed Estates Ltd and another* [2019] EWHC 704 (Ch), the English High Court refused permission to appeal against an arbitral award on a point of law (under section 69 of the AA) and gave directions for a challenge to the award for serious irregularity (under s68 of the AA) to be listed for a separate hearing.

In responding to the Claimant's request that the section 68 and 69 applications be heard together, the judge held that the court's usual approach is to first hear a section 68 application and only if that fails, to then consider the permission to appeal

under section 69. It indicated that the section 69 application should be dealt with on paper if both applications are not closely related.

As to the Claimant's contention that the award was "*obviously wrong*", the judge held that the *"obvious error*" must be demonstrable on the face of the award. The judge need look only at the terms of the award, the terms of the lease in question and primary points stemming from the arguments made – a forensic examination of the factual matrix and complicated written arguments should not be necessary as that is not the purpose of section 69. He concluded that while there was room for another view of the lease's provisions, it was far from showing that the award was on its face "*obviously wrong*".

EC FILES AMICUS CURIAE IN US PROCEEDINGS AGAINST THE ENFORCEMENT OF EISER ECT AWARD

31 March 2019: In *Eiser Infrastructure Limited and another v Kingdom of Spain [2019]*, the EC filed an amicus curiae brief on behalf of the EU in support of Spain in US proceedings to enforce the ICSID intra-EU ECT award in Eiser's favour. The EC sought to persuade the US court it should decline jurisdiction because there was no valid agreement to arbitrate since the ECT does not operate as between EU member states.

In the brief, the EC highlighted that following the ECJ's annulment of the *Achmea B.V. v Slovak Republic* award in January 2019, all EU Member States issued a declaration on intra-EU BITs (the "**Declaration**") whereby they confirmed that arbitral tribunals established on the basis of investor-State arbitration clauses lack a valid offer to arbitrate by the Member States.

SCC ORDERS REPUBLIC OF GEORGIA TO REFRAIN FROM SEIZING ASSETS BELONGING TO OGT

2 April 2019: In *Zaza Okuashvili v. Republic of Georgia* at the SCC, the emergency arbitrator Fredrik Andersson prohibited the Georgian State from enforcing the judgment of the Tbilisi City Court, which would lead to the sale of assets of the Omega Group Tobacco ("**OGT**"), a company of the Georgian entrepreneur Okuashvili, as he found that OGT's existence was threatened by the enforcement measures.

The Georgian state had already seized several assets of OGT and Okuashvili in 2017, allegedly pursuant to outstanding tax payments amounting to 19 million US dollars incurred by the cigarette production company within OGT. According to Okuashvili, these tax allegations were purely politically motivated and the result of government corruption. This is an interesting example of an emergency arbitrator dealing with sensitive matters against a State.

PARIS COURT OF APPEAL PROVIDES HELPFUL GUIDANCE ON ARTICLE 1466 OF THE FRENCH CIVIL CODE OF PROCEDURE

2 April 2019: In *Vincent J. Ryan et al. c/ République de Pologne,* Cour d'appel de Paris, No. 16/24358, the Paris Court of Appeal rejected the request of US investors to set aside the November 2015 ICSID Additional Facility award which had dismissed their Poland-US BIT claims. The arbitral tribunal had held that the BIT's tax carve-out applied to the claimants' FET and rejected the remaining claims on the merits.

The interesting aspect of the Court's decision is its explicit recognition that Article 1466 of the French Code of Civil Procedure, which prevents parties from raising before the annulment court arguments which were not previously submitted to the arbitral tribunal, applies not just to procedural defects but extends to all grounds for potential set aside applications (with the exception of public policy grounds). The Court added that the arguments must have been properly developed before the arbitral tribunal, and not merely mentioned.

VALE WINS $1.2 BILLION ARBITRATION AWARD AGAINST BSGR

4 April 2019: In *Vale v BSG Resources Limited, LCIA Case No. 142683,* Brazilian mining company Vale SA ("**Vale**") won over $1.25 billion in LCIA proceedings against BSGR mining company ("**BSGR**"). The award may have repercussions on the ICSID settlement deal between BSGR and Guinea to exploit another iron ore deposit, if Vale successfully claims that BSGR rights over the ore are "*assets subject to enforcement*".

The UK Court issued enforcement proceedings on May 9, but the High Court has yet to schedule a hearing. In the meantime, BSGR filed for bankruptcy protection in the US, which could contribute to the delay of the enforcement proceedings. BSGR is also appealing Vale's arbitration award on procedural grounds.

COURT OF APPEAL OF CALIFORNIA HOLDS THAT CONTINUED EMPLOYMENT CAN SIGNAL ACCEPTANCE OF ARBITRATION AGREEMENT

10 April 2019: In *Diaz v. Sohnen Enterprises et al.*, 34 Cal. App. 5th 126, the California Court of Appeal found an employer able to compel arbitration with an employee, even when though the employee refused to sign an arbitration agreement.

The court explained that, under California law, an at-will employee has impliedly consented to an arbitration agreement when the employee continues his or her employment after receiving notification that the arbitration agreement is a condition of employment. Such an agreement is not unconscionable, even if it is adhesive in nature.

INDIAN SUPREME COURT CONFIRMS ARBITRATION CLAUSES INEFFECTIVE UNTIL STAMPING REQUIREMENTS FULFILLED

10 April 2019: In *Garware Wall Ropes Ltd v Coastal Marine Constructions & Engineering Ltd*, Civil Appeal No. 3631 of 2019, despite recent amendments to the Indian Arbitration Ordinance by way of the Arbitration and Conciliation (Amendment) Act 2015, the Indian Supreme Court confirmed that an arbitration clause in a contract required to be stamped does not become effective until duly stamped under the Indian Stamp Act.

SOUTH CAROLINA COURT AFFIRMS ARBITRATION CAN BE ENFORCED AGAINST NON-SIGNATORIES

10 April 2019: In *Wilson v. Willis,* 426 S.C. 326, the Supreme Court of South Carolina affirmed the limited circumstances in which a non-signatory to an arbitration agreement may be compelled to arbitrate under a theory of estoppel.

The court explained that whether an arbitration agreement is enforceable against non-signatories and when is a question of state law. Under South Carolina law, a non-signatory to an arbitration agreement may be compelled to arbitrate under a theory of equitable estoppel if it has assumed the contract, including by maintaining enforcement of other provisions for its benefit. The court parsed out that a non-signatory that merely attempts to enforce a contractual relationship between others, does not directly benefit from the contract and therefore may not be compelled to arbitrate.

BEIJING COURT DECISION ON REPEAT ARBITRATION PROCEEDINGS

23 April 2019: In *Mr Xu Jinglin v Beijing Kingstar Fortune Co. Ltd.*, the Beijing No. 4 Intermediate Court ("**Beijing Court**") clarified that, under the PRC Arbitration Law, if significant new facts emerge following a final arbitration award, parties to the arbitration may commence arbitration anew on the same issues. The Beijing Court rejected the argument that the award being challenged violated Article 9 of the PRC Arbitration Law (rendering the award final and binding and preventing re-litigation of the same dispute) basing its decision on articles 247 and 248 of the Interpretation of the Supreme People's Court on the Application of the PRC Civil Procedure Law, which allows repeat litigation to take place if new facts arise after judgment has been handed down. The case is therefore significant as it facilitates access to justice through arbitration when new facts emerge.

CLASS ARBITRATIONS NOT SUPPORTED UNDER FAA WHERE ARBITRATION AGREEMENT IS AMBIGUOUS ON THE SUBJECT

24 April 2019: In *Lamps Plus, Inc. v Varela,* 139 S. Ct. 1407 (2019), Mayer Brown litigators obtained a US Supreme Court victory for Lamps Plus in a case addressing whether a court may order class-wide arbitration when an arbitration agreement does not expressly discuss the subject. The team included: DC partners Andy Pincus (who argued the case), Archis Parasharami and Dan Jones; and Northern California partner, Don Falk.

The Court held, by a 5-4 vote, that the Federal Arbitration Act ("**FAA**") requires an affirmative basis in the contract for concluding that the parties agreed to class arbitration—recognizing that class arbitration is fundamentally different from the individualized arbitration protected by the FAA.

The Court therefore reversed the Ninth Circuit's decision that had allowed class arbitration by applying the state-law public policy rule that ambiguities are construed against the drafter.

The holding that the FAA preempts that state-law rule is likely to have broad impact in other cases challenging the enforcement of arbitration agreements.

ENGLISH CASE REMINDS PARTIES OF THE BENEFITS OF STIPULATING THE LAW APPLICABLE TO THEIR ARBITRATION AGREEMENT

1 May 2019: *J (Lebanon) v K (Kuwait)* [2019] EWHC 899 (Comm) is the latest English High Court case dealing with applicable law issues (inter alia). It reminds us that the law governing the validity of the arbitration agreement is determined by the test set out in *Sulamerica v Enesa Engenharia* – hence, it's either an express or implicit choice of the parties, alternatively the system of law with which the agreement has the closest and most real connection. It also clarifies that the law governing the validity of the arbitration agreement also governs whether a corporate entity has become a party to the agreement.

The case concerned an application to enforce an arbitral award against a non-party to an arbitration agreement and serves as a useful reminder of the jurisdictional issues that can arise when arbitrations are commenced against non-parties. On the facts of this case, the Court also found that the capacity of the corporate to become a party to the arbitration agreement would be governed by the law of its place of incorporation.

TRIBUNAL REJECTS ITALY'S JURISDICTIONAL OBJECTIONS, BASED ON ACHMEA AND THE DECLARATION, IN ECT CLAIM

7 May 2019: In *Eskosol SpA in Liquidazione v Italian Republic*, ICSID case no. ARB/15/50, the Tribunal issued a decision on Italy's jurisdictional objections based on the inapplicability of the ECT to intra-EU disputes and its request for an award declaring immediate termination of the arbitration. The tribunal rejected arguments that the ECJ's *Achmea* decision and the Declaration meant that the tribunal was obligated to dismiss the claim, finding that it had jurisdiction under the ECT.

It found that the Declaration went beyond the findings in the *Achmea* judgment, and agreed with several other tribunals, including *Eiser*, on similar reasoning, that it was not barred from taking up the claim. The Declaration was, in the view of the tribunal, not a binding instrument, and the ECT terms will not be changed by the fact that both Italy and Belgium signed the declaration.

It also held, in line with the tribunals in *Masdar* and *Vattenfall*, that the references in *Achmea* ECJ only refer to bilateral treaties, and cannot be presumed to extend to multilateral treaties involving non-EU Member States.

The final issue on the enforceability of the award concerned the fact, accepted by the Tribunal, that if the *Achmea* judgment ultimately is determined to be applicable to the ECT, a court subject to the EU legal order may question the enforceability of an ECT award. However, the Tribunal did not consider this to be sufficient to make the award "*unenforceable*", because the issue of a categorically "*unenforceable award*" would only arise for one issued in violation of the mandatory rules of the arbitral seat, which in this case is not possible being this a de-nationalized ICSID case.

Determination of other jurisdictional matters and issues on the merits remain pending.

CHALLENGES TO AWARD STAYED UNTIL TRIBUNAL DETERMINES JURISDICTIONAL MATTER IN RELATED ARBITRATION

8 May 2019: *Minister of Finance (incorporated) and another v International Petroleum Investment Co and another [2019] EWHC 1151 (Comm)* is a "*rare and compelling*" case in which a case management stay of challenges to an award under sections 67 and 68 of the Arbitration Act 1996 ("**AA**") was appropriate, pending the outcome of arbitrations between the same parties.

The question which was to be determined – the valid and binding nature of settlement deeds – was the same in the challenge applications and in a second arbitration and so the issue was who should determine that question: the English court or the tribunal? The court decided to grant a stay thereby enabling the party-selected tribunal to examine the question first. It also confirmed that section 9 of the AA did not apply since this was a matter which the parties agreed may be referred to the court or to arbitration (as opposed to a referral to arbitration alone).

NEW YORK COURT ISSUES EMERGENCY INJUNCTION IN AID OF ARBITRATION

16 May 2019: In *Espiritu Santo Holdings, LP. v. L1bero Partners, LP et al.*, 19-cv-03930, 2019 WL 2240204, a court in the Southern District of New York issued an emergency injunction in aid of arbitration that barred Respondent from taking steps that could undermine the ability of an arbitration panel to redress the potential breaches, though it declined to enjoin a suit filed by the Respondent in Mexico challenging the validity of the underlying arbitration agreement.

The decision exemplifies U.S. federal courts' efforts in aid of arbitration, particularly to prevent irreparable harm while an arbitration is pending.

ENGLISH COURT FINDS TRIBUNAL DECISION TO REFUSE PERMISSION TO PURSUE A DERIVATIVE ACTION IS A PROCEDURAL ORDER AND NOT AN AWARD

22 May 2019: In *ZCCM Investments Holdings v Kansanshi Holdings Plc & another* [2019] EWHC 1285 (Comm), the English Commercial Court found that a tribunal's decision to refuse permission to pursue a derivative action was a procedural order and not an award. It was therefore not susceptible to challenge under section 68 of the AA.

The Court outlined relevant factors for distinguishing a procedural order from an award. These included, *inter alia*, giving weight to the substance of the decision and not merely its form and assessing whether the decision dealt with substantive rights and liabilities, whether it finally disposed of an issue or claim, how the tribunal described the decision and how a reasonable recipient would have viewed the decision.

Given the present uncertainty as to whether or not English Courts are willing to enforce decisions of emergency arbitrators, the case is important as it may support the English Courts' enforcement of such decisions if they are interpreted as final and enforceable.

SERVICE OF ENFORCEMENT ORDERS AGAINST FOREIGN STATES

3 July 2019: In *General Dynamics United Kingdom Ltd v State of Libya* [2019] EWCA Civ 1110, the English Court of Appeal overturned the Commercial Court's January 2019 decision that enforcement orders must be served through the Foreign and Commonwealth Office ("**FCO**") pursuant to section 12 of the State Immunity Act. Instead, it held that service of enforcement orders is required in accordance with CPR 62.18 and 6.44, although service could be dispensed with in an appropriate case under CPR 6.16 and/or 6.28. By reversing the lower court's position, this decision facilitates enforcement of awards against foreign states particularly where the state is suffering internal conflict or, for some other reason, service through the FCO is likely to be difficult.

Mayer Brown Key Upcoming Events

8 August 2019: Vilmar Gonçalves (Rio) will speak at the IV Congresso Internacional CBMA de Arbitragem, in Rio de Janeiro.

22-24 August 2019: Tauil & Chequer in association with Mayer Brown is sponsoring 18° Congresso Internacional de Arbitragem, in Brasilia. Gustavo Fernandes (Rio) will be the moderator in the workshop "*Peculiaridades dos Procedimentos Arbitrais envolvendo a Administração Pública*" ("*Peculiarities of Arbitral Procedures involving the Public Administration*").

6 September 2019: B. Ted Howes (New York) will speak on the subject of "*Third Party Funding in arbitration: what challenges lie ahead*" at the 2019 Brazilian Arbitration Day at NYU School of Law.

September-October 2019: Yu-Jin Tay (Singapore) will be Course Director and Faculty of the Seoul International Arbitration Academy.

24 October 2019: Mayer Brown is sponsoring GAR's Who's Who Legal: Future Leaders Hong Kong conference. Yu-Jin Tay (Singapore) will be the co-chair of the conference.

25 October 2019: Amita Kaur Haylock (Hong Kong) will host the SVAMC Hong Kong Breakfast Meeting in Mayer Brown's Hong Kong office.

28 November 2019: Yu-Jin Tay (Singapore) will chair the annual SIArb Commercial Arbitration Symposium in Singapore.

We are currently in the process of planning a number of events to take place throughout 2019 and 2020. Once details have been confirmed we will email you an invitation with further details. Alternatively, please check our website which will be updated regularly.

Mayer Brown Key Past Events

6 March 2019: Raid Abu-Manneh (London), Dany Khayat (Paris) and Jawad Ahmad (London) hosted a client roundtable in Istanbul on the topic "*Foreign Investment Law and Investment Arbitration*".

3 April 2019: Mayer Brown's Paris office hosted a seminar entitled "*Politics and Arbitration*" during the Paris Arbitration Week 2019.

10-13 April 2019: Sarah Reynolds (Chicago) spoke on "*Clicking Confidential: Practical Guidance to Protect Cybersecurity and Ensure Cross-Border Data Privacy Compliance in Arbitration*" and Jim Ferguson (Chicago) spoke on "*Adapting Arbitration to Meet Client Needs*" at the ABA Section of Dispute Resolution Spring Conference in Minneapolis.

24 April 2019: Yu-Jin Tay (Singapore) presented on "*What you need to know about VIAC Arbitration: Trends and Experiences - VIAC international roadshow to Singapore*" to senior arbitration practitioners in Singapore from international, regional and Singaporean law firms representing clients with investments in Vietnam.

25 April 2019: Tauil & Chequer Advogados in association with Mayer Brown hosted an event with Mr. Matthieu de Boisséson in the Rio de Janeiro office on the outlook and recent development of arbitration in the oil and gas industry.

25 April 2019: Soledad O'Donnell (Chicago) spoke at the 18th Annual Folsom Lecture in International Business and Trade Law at the John Marshall Law School on "*Trends in International Arbitration and other means of dispute resolution*".

25/26 April 2019: Yu-Jin Tay (Singapore) participated in the 5th ICC Asia Conference on International Arbitration in Singapore.

30 April 2019: Sarah Reynolds (Chicago) moderated a panel on "*Third Party Funding Comes to Tech Arbitration and Mediation*" at the SVAMC All-Members meeting in San Francisco.

2 May 2019: Gustavo Fernandes de Andrade (Rio) spoke about "*Direito Administrativo e Arbitragem*" ("*Administrative Law and Arbitration*") at the Instituto dos Advogados do Brasil (IAB) Seminar.

3 May 2019: Gustavo Fernandes de Andrade (Rio) spoke about "*Commercial Arbitration and Consensus Methods of Dispute Resolution*" at the PUC-Rio Centro Seminar, presenting the main aspects and guidelines that rule arbitration law in Brazil.

7 May 2019: Raid Abu-Manneh (London) spoke at London International Disputes Week on the topic of "*London as an International Arbitration Hub*".

7 May 2019: Yu-Jin Tay (Singapore) spoke at a SIArb seminar on the topic of "*Residual Discretion Under the New York Convention*" and moderated a SIArb seminar concerning "*Challenges to Investment Treaty Arbitration Awards Before National Courts*".

16-18 May 2019: Sarah Reynolds (Chicago) spoke on "*Arbitrator's Skill in International Arbitration*" at the Vietnam Lawyers' Commercial Arbitration Center Annual Conference.

23 May 2019: Kwadwo Sarkodie (London) spoke about "*The Use and Function of Tribunal Secretaries*" at the LCIA's African Users' Council Symposium.

27 May 2019: Dany Khayat (Paris) spoke at the Annual Conference of AMCHAM Brazil Arbitration and Mediation Center providing a critical view of arbitration in Sao Paulo, Brazil.

31 May-1 June 2019: James Ferguson (Chicago) presented on "Arbitrating Life Services Disputes" at the IBA's 7th Annual World Life Sciences Conference in Philadelphia, Pennsylvania.

6 June 2019: Raid Abu-Manneh (London) spoke at Romania Arbitration Day's seminar entitled "*Is there a need to reform international commercial arbitration*?"

7 June 2019: João Marçal Martins (São Paulo) taught a specialization course on Commercial Arbitration and Methods of Conflict Resolution at PUC-Centro in Rio.

12 June 2019: Sarah Reynolds (Chicago) spoke "*Early and Efficient Resolution of International Commercial Disputes: the New Rules of the German Arbitration Institute (DIS) DIS-Rules*" at the SVAMC-DIS Conference.

19 June 2019: Soledad O'Donnell (Chicago) moderated a panel on "*A Tour Around the Arbitration World*" at 31st Annual ITA workshop.

20 June 2019: Raid Abu-Manneh (London) spoke at the 7th Annual GAR LIVE event in Istanbul on the theme "*International Arbitration - Bridging or Entrenching Divides*?"

25 June 2019: Tauil & Chequer hosted the event "*Arbitraje Brasil y España*" ("*Arbitration in Brazil and Spain*") in São Paulo promoted by Camara de Comércio Brasil España, with Gustavo Fernandes.

26 June 2019: B. Ted Howes (New York) spoke on IP and entertainment in international arbitration at the 2019 New York Summit on Commercial Dispute Resolution in China.

26 June 2019: Kwadwo Sarkodie (London) attended the 3rd Annual Arab African Mining Conference in London.

26 June 2019: Rachael O'Grady (London) spoke at the 2nd Annual "*Who's Who Legal Future Leaders Arbitration Conference*".

12 July 2019: Gustavo Fernandes (Rio) spoke at "*4° Congresso Camesc*" in Santa Catarina, on the panel discussing "*International Treaties of Investment and Sovereignty – Distinction Between Arbitration Requests In The Framework Of Investment Treaties Versus Contracts*".

Mayer Brown Publications

JURISDICTIONAL CONSIDERATIONS WHEN SELECTING A EUROPEAN SEAT

1 January 2019: Raid Abu-Manneh and Rachel O'Grady (both London) published an article in Mealey's International Arbitration report entitled "*Jurisdictional Considerations: a global guide to arbitration, Europe*".

To read the full article, click here.

TOP TEN CONSIDERATIONS WHEN CONTRACTING IN AFRICA

8 January 2019: Tamsin Travers and Joseph Otoo (both London) published an article in Construction News entitled "*Contracting in Africa : 10 things to think about*".

To read the full article, click here.

BRIDGESTONE DECISION PROVIDES FRAMEWORK FOR ANALYSING INTELLECTUAL PROPERTY ISSUES IN INVESTOR-STATE ARBITRATIONS

8 March 2019: James Ferguson (Chicago) wrote an article entitled "*IP And Investor-State Arbitration After Bridgestone*" which featured on Law360.

To read the full article, click here.

UAE FEDERAL LAW ON ARBITRATION IN COMMERCIAL DISPUTES (FEDERAL LAW NO. 6 OF 2018) WILL HELP ALLAY INTERNATIONAL CONTRACTORS' CONCERNS

22 March 2019: Raid Abu-Manneh and Ali Auda (both London) published an article in Gulf News entitled "*Building an arbitration platform that works for all*" which examined the construction sector in the Middle East.

To read the full article, click here.

AN IN-DEPTH QUANTITATIVE ANALYSIS OF ICSID'S SUMMARY DISPOSITION RULES

19 May 2019: B. Ted Howes and Allison M. Stowell (both New York) authored an article in in Dispute Resolution International entitled "*The Impact of Summary Disposition on International Arbitration: A Quantitative Analysis of the ICSID's Rule 41(5) on Its Tenth Anniversary*" which quantitatively analysed the effect of summary disposition on the efficiency of international arbitration.

To read the full article, click here.

THAILAND LEGAL DEVELOPMENTS PAVE THE WAY FOR FOREIGN REPRESENTATIVES AND ARBITRATORS TO ACT IN THAI ARBITRATIONS

21 May 2019: Maythawee Sarathai and James Rix (both Bangkok) authored an article entitled **"***Finally a level playing field in Thai arbitrations?*"

To read the full article, click here.

OVERCOMING ISSUES RELATING TO THE CONSTRUCTION SECTION IN THE MIDDLE EAST

24 June 2019: Raid Abu-Manneh and Ali Auda (both London) published an article in the Oath entitled "*Can they fix it*?" which examined the construction sector in the Middle East.

To read the full article, click here.

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