MAYER | BROWN

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Global International Arbitration Update

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Legal Updates

AMENDMENTS TO THE INDIA ARBITRATION AND CONCILIATION ACT 1996 IN FORCE

18 July 2019: The Upper House of the Parliament of India passed the Arbitration and Conciliation (Amendment) Bill 2019 to amend the Arbitration and Conciliation Act 1996. The amendments came into force with effect from 9 August 2019.

The 2019 Bill introduces the Arbitration Council of India ("**ACI**"), a watchdog for institutional arbitration in India. Among other things, the ACI is entrusted with grading arbitral institutions on the basis of criteria relating to infrastructure, quality and calibre of arbitrators, performance and compliance of time limits for disposal of domestic or international commercial arbitrations.

The 2019 Bill also gives the Supreme Court of India and the High Courts power to designate arbitral institutions, with the idea being that instead of the court stepping in to appoint arbitrators in cases where parties cannot reach an agreement, the courts will designate graded arbitral institutions to perform that task.

HKIAC AMENDS RULES TO FURTHER FACILITATE COST EFFECTIVE AND EFFICIENT ARBITRATION AND MEDIATION

01 August 2019: The Arbitration (Appointment of Arbitrators and Mediators and Decision on the Number of Arbitrators) Amendment Rules 2019 (Cap 609C) ("**Amended Rules**"), which apply to ad hoc arbitrations seated in Hong Kong, came into effect on 1 August 2019. The Amended Rules provide the Hong Kong International Arbitration Centre ("**HKIAC**"), which is the default appointing authority for ad hoc arbitrations under the Hong Kong Arbitration Ordinance (Cap 609) ("**Ordinance**"), with greater discretion in respect of fees and time limits in respect of its appointment procedures to further facilitate the conduct of cost-effective and efficient arbitrations seated in Hong Kong.

Under the Amended Rules, the HKIAC now will charge a one-off fee of HK$8,000 for providing its appointment functions under the Ordinance where the total amount in dispute is less than HK$2.5 million, unless the HKIAC decides to waive this fee, or determines otherwise. The HKIAC may also decide on how or whether to exercise its appointment functions following the expiry of applicable time limits.

STATE OF SÃO PAULO ENACTS DECREE ON THE USE OF ARBITRATION IN DISPUTES INVOLVING THE PUBLIC ADMINISTRATION

01 August 2019: Decree no. 64,356 of the State of São Paulo came into force to regulate the use of arbitration for the resolution of disputes involving the state and its entities. The decree provides, among other things, that the seat of arbitration shall be the city of São Paulo and Brazilian Law shall be applied. The arbitration panel shall comprise three arbitrators, unless the amount in dispute is low or the issue at stake is not complex, in which case a sole arbitrator is allowed. The language of the procedure shall be Portuguese, but technical documents can be produced in English.

THE SINGAPORE CONVENTION ON MEDIATION

07 August 2019: Signed by 46 countries at its opening, the Singapore Convention has established a framework for the cross-border recognition and enforcement of mediated settlement agreements. This runs in parallel with the New York Convention which similarly facilitates recognition and enforcement, but of arbitral awards instead. The Singapore Convention governs all settlement agreements concluded in writing, and resulting from mediation to resolve international commercial disputes. Quite expectedly, the recognition and enforcement of the settlement agreements are subject to the usual exceptions such as public policy concerns, where the mediator has committed a serious breach of standards, one of the parties concerned was under some incapacity in concluding the settlement, or where the settlement is null and void, inoperative or incapable of being performed.

The Singapore Convention is a welcome advancement for the international dispute resolution scene. Prior to the Singapore Convention, parties could not directly enforce a mediated settlement agreement because settlement agreements are contracts, but would have had to commence fresh proceedings to seek relief for breaches of the settlement agreement instead. Together with mediation institutions like the Singapore International Mediation Centre, the Singapore International Mediation Institute and the Singapore International Dispute Resolution Academy, Singapore looks set to remain in the limelight with regard to global developments in alternative dispute resolution. To date, 51 countries have signed the Singapore Convention.

ICSID'S PROPOSED AMENDMENTS TO DISPUTE RESOLUTION RULES

16 August 2019: the International Centre for Settlement of Investment Disputes released the third iteration of proposed amendments to its various dispute resolution rules.

Certain proposed amendments that are of interest include:

- The deadline for party agreement on the method of tribunal composition is shortened from 60 to 45 days;
- Expanded disclosure declarations by arbitrators, with an express requirement to disclose professional, business and other significant relationships within the past five years, with: (i) the parties; (ii) counsel for the parties; (iii) other members of the tribunal; and (iv) any third-party funder disclosed;
- Third-party funding can be taken into account as evidence of a circumstance for the purposes of deciding whether to order security for costs;
- Deemed consent, in the absence of written objection, to publication of awards, decisions and orders within 60 days of dispatch to the parties, has been reinstated; and
- The procedure for appointing the tribunal for expedited proceedings has been streamlined.

BRAZILIAN LAW AUTHORISES MEDIATION AND ARBITRATION IN EXPROPRIATION DISPUTES

27 August 2019: Law no. 13.867/19 authorises the use of mediation and arbitration to define the amount of compensation due to owners in expropriation disputes. The purpose of the law is to provide efficient resolution methods to be used by the expropriating entity and the expropriated party.

CONDITIONAL FEE ARRANGEMENTS – SINGAPORE'S MINISTRY OF LAW'S CONSULTATION PAPER

27 August 2019: The Ministry of Law recently proposed changes to the law on Conditional Fee Agreements ("**CFAs**"), in step with changes made to Singapore's Third Party Funding ("**TPF**") framework. Singapore law currently prohibits CFAs and contingency fee agreements between lawyers and their clients. The current proposals envisage a legal framework permitting CFAs in relation to international and domestic arbitration, litigation or mediation proceedings arising out of arbitration and certain proceedings before the Singapore International Commercial Court ("**SICC**"). This would align the permitted areas for CFAs with the permitted areas for TPF in Singapore (which was liberalised in early 2017).

Mayer Brown's International Arbitration team in Singapore was actively engaged in the consultation process and has also been involved in prior consultations on CFAs, advocating reform to enhance cost-competitiveness of the Singapore arbitration and international disputes ecosystem. If the CFA proposals are adopted, this would bring Singapore in line with other leading arbitral seats where alternative fee arrangements have been available for some time.

COURT OF APPEALS OF THE STATE OF SÃO PAULO CREATES A WORKING GROUP WITH EXPERTS IN ARBITRATION

30 August 2019: Court of Appeals of the State of São Paulo launched a working group formed by experts in arbitration. The working group aims to serve as a communication channel between the Judiciary and the civil society to discuss problems and issues related to arbitration.

BAC ISSUES NEW RULES TO IMPROVE QUALITY AND EFFICIENCY OF ARBITRATION

01 September 2019: The Beijing Arbitration Commission ("**BAC**") has issued a revised version of its arbitration rules and a fee schedule ("**New Rules**"), which aim to bring BAC arbitrations further in line with international practice. The New Rules came into effect on 1 September 2019.

The New Rules allow for a single arbitration dealing with multiple contracts and provide for emergency arbitrators. Arbitration cases involving a dispute of RMB 5 million or less will now be subject to summary procedures, handled by a sole arbitrator, with all other disputes being subject to ordinary procedures, requiring a full panel of 3 arbitrators.

Of particular practical significance are the provisions providing transparency in relation to arbitration costs: dividing these into arbitrator's fees and administration fees. Arbitrator's fees are raised under the New Rules, and various caps are placed upon the arbitration costs depending on the amount in dispute. These measures are designed to incentivise higher quality arbitrator services and efficiency, while maintaining appropriate costs for smaller arbitrations and providing cost predictability overall.

ADGMAC PUBLISHES ARBITRATION GUIDELINES

17 September 2019: the Abu Dhabi Global Market Arbitration Centre ("**ADGMAC**") published its Arbitration Guidelines to provide participants in an arbitration dispute with a best practice procedure to ultimately provide greater certainty and efficiency to the arbitral process "whilst ensuring fairness, equality and due process". While the ADGMAC is not an arbitration institution by itself, it provides a neutral hearing facility to be used by parties regardless of which arbitral institution they have chosen to administer their dispute.

The ADGMAC Arbitration Guidelines are the first soft-law instrument of its kind in the Middle East and does not carry a binding effect on parties or the arbitral tribunal unless agreed otherwise. The Guidelines are drafted in a way that can be applied in both an ad hoc and institutional context, largely avoiding any undesirable overlap with existing institutional rules.

SCC'S NEW POLICY ON DISCLOSURE OF THIRD-PARTY INTERESTS

19 September 2019: the Arbitration Institute of the Stockholm Chamber of Commerce ("**SCC**") has published its new policy to encourage parties to an arbitration to disclose, in their first submissions, the identity of any third parties that have an interest in the outcome of the dispute.

SCC requires arbitrators to sign a statement of independence and impartiality prior to appointment. The SCC has identified a risk that an arbitrator may be appointed who has a relationship with an undisclosed third party that has an interest in the outcome of the dispute. To ensure the integrity of the proceedings and the award, the new SCC policy encourages disclosure to avoid the risk of conflicts between arbitrators and third parties. Third-party interests include funders, parent companies and ultimate beneficial owners.

FEDERAL GOVERNMENT ENACTS DECREE ON THE USE OF ARBITRATION IN DISPUTES INVOLVING THE PUBLIC ADMINISTRATION

23 September 2019: Decree 10,025/19 came into force to regulate the use of arbitration in the resolution of disputes involving the Federal Public Administration in the following sectors: ports, roads, railways, waterways and airports. Pursuant to the decree, disputes on patrimonial disposable rights, such as (i) the economic and financial balance of contracts; (ii) compensation due to the termination or transfer of agreements; and (iii) breach of contractual provisions may be submitted to arbitration. The decree provides, among other things, that the seat of arbitration shall be Brazil and Brazilian law shall be applied.

SCC PUBLISHES STUDY ON GREEN TECHNOLOGY DISPUTES

23 September 2019: the Arbitration Institute of the Stockholm Chamber of Commerce ("**SCC**") has published a study showing that more green technology companies are resorting to arbitration at the SCC to resolve their disputes.

This study shows that under commercial contracts disputes, the majority of the parties who appeared in these disputes pursued business activity in the renewable energy sector and the top three nationalities of parties were Swedish, German and Norwegian. Most disputes arose from delivery agreements and construction agreements, with the most frequent claims being for damages for non-delivery and failure to pay for delivery.

This study also shows that of all green technology disputes arising from investment treaties, they were all brought under the Energy Charter Treaty and the majority of green investment disputes concerned investments in solar photovoltaics, while the rest concerned investments in wind energy.

CIETAC SIGNS COOPERATION AGREEMENTS WITH SIX ARBITRAL INSTITUTIONS

October 2019: In a roundtable during the China Arbitration Week 2019, the China International Economic and Trade Arbitration Commission signed six cooperation agreements with arbitral institutions based in Uzbekistan (Tashkent International Arbitration Centre), Lithuania (Vilnius Court of Commercial Arbitration), Pakistan (Center for International Investment and Commercial Arbitration), Spain (Ilustre Colegio de Abogados de Madrid), Poland (Court of Arbitration at the Polish Chamber of Commerce in Warsaw) and Indonesia (Indonesian Academy of Independent Arbitrators and Mediators).

According to the arrangements of the cooperation agreements, both sides will carry out in-depth cooperation in various fields of international arbitration, including the joint efforts in promoting international arbitration and other alternative dispute resolution methods, utilisation of hearing facilities, recommendation of arbitrators, and co-hosting international arbitration seminars and training.

NEW ARRANGEMENT ALLOWS HONG KONG ARBITRATIONS TO SEEK INTERIM MEASURES FROM PRC COURTS

01 October 2019: On 2 April 2019, The Hong Kong Government and the Supreme People's Court of the People's Republic of China signed an Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region ("**Arrangement**"), which came into effect on 1 October 2019.

Under the Arrangement, any party to arbitral proceedings seated in Hong Kong and administered by qualifying arbitral institutions (including the HKIAC, the Hong Kong Branch of CIETAC and the Asian Office of the ICC) may, prior to the issuance of the arbitral award, apply to the relevant Mainland Chinese courts for interim measures in relation to the arbitral proceedings in accordance with the relevant laws and regulations of Mainland China. Such interim measures mainly will include preservation measures against assets, evidence or property.

The Arrangement is unique as, previously, only arbitrations seated in Mainland China could reliably seek interim relief from the Mainland Chinese courts. The Arrangement is therefore expected to enhance the attractiveness of Hong Kong as a seat for arbitrations where the prospect of seeking interim measures in Mainland China is seen as a priority.

UNIFICATION OF SPAIN'S THREE LARGEST ARBITRAL INSTITUTIONS

16 October 2019: The top three Spanish arbitration institutions, being the Madrid Court of Arbitration, the Civil and Commercial Court of Arbitration and the Spanish Court of Arbitration, have merged their international activities to create the Madrid International Arbitration Center ("**MIAC**"). Joined by the Madrid Bar Association, the four institutions have combined their experience and efforts to provide users with an independent, transparent and efficient international dispute resolution service.

MIAC will start operating in early 2020 and will only administer international cases, while domestic arbitrations will still be handled by the associated courts. MIAC will also administer international cases arising out of arbitration agreements designating any of the four promoting entities as administering institution, provided that they are signed on or after 1 January 2020. To that end, all four entities will have their Rules amended by that date to include this renvoi clause to MIAC.

EU MEMBER STATES AGREE ON A MULTILATERAL TREATY TO TERMINATE INTRA-EU BITS

24 October 2019: In an announcement dated 24 October 2019, the European Commission revealed that most European Union Member States have reached an agreement on a multilateral treaty for the termination of intra-EU Bilateral Investment Treaties.

However, according to the announcement, there are still divergences between the Member States with respect to the consequences of the *Achmea* judgement for arbitrations under the Energy Charter Treaty.

HONG KONG CONSIDERS ALLOWING SUCCESS FEES IN ARBITRATION

25 October 2019: The Hong Kong Law Reform Commission ("**HKLRC**") announced that it has formed a subcommittee to investigate whether outcome related fees may be permitted in arbitrations seated in Hong Kong. The subcommittee will consider whether reform is required and, if so, make recommendations as to the form.

Following a previous review in 2007 the HKLRC had concluded that outcome related fees were "not appropriate" for Hong Kong given the poor "after the event" insurance market required to cover an opponent's legal costs. However, the HKLRC has now stated that it "sees the value" in reconsidering outcome related fees, based on the status of Hong Kong as a leading arbitration institution in the Asia Pacific.

This development follows the coming into force of legislation allowing third party funding in Hong Kong earlier this year, and a recommendation from Singapore's Ministry of Law in October that outcome related fees be allowed in Singapore seated arbitrations.

THE REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP ("RCEP")

04 November 2019: In Asia, 15 states concluded negotiations in November on the RCEP, with formal signing anticipated to take place in 2020. The RCEP is a trade pact between the ASEAN countries, together with China, Japan, South Korea, Australia and New Zealand, making up nearly a third of the world's population. With the increase in multilateral trade as envisioned by the RCEP, one would expect an increase in deals in the region in the years to come. It was reported that all 15 states have agreed not to include the Investor State Dispute Settlement mechanism in the text of the RCEP. This can be contrasted to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership which adopts ISDS as the main investor-state dispute resolution mechanism. It remains to be seen what the chosen dispute settlement regime for the RCEP will be, and this will undoubtedly be an interesting space to watch, given the volume of investments and trade deals soon to fall within the ambit of the RCEP.

ICCA - NYC BAR - CPR WORKING GROUP LAUNCHES CYBERSECURITY PROTOCOL FOR INTERNATIONAL ARBITRATION

21 November 2019: A working group formed by the International Council for Commercial Arbitration ("**ICCA**"), the New York City Bar Association ("**NYC Bar**") and the International Institute for Conflict Prevention and Resolution ("**CPR**") has released a Cybersecurity Protocol for International Arbitration ("**Cybersecurity Protocol**").

During the first annual New York Arbitration Week, the ICCA-NYC Bar-CPR Working Group launched the Cybersecurity Protocol, which aims to provide practical guidance for counsel, arbitrators, and institutions that can be adopted by parties to an international arbitration. The Cybersecurity Protocol includes baseline security measures, while making clear that it's the responsibility of all involved in an arbitration to address this increasingly important issue.

DUBAI INTERNATIONAL ARBITRATION CENTRE REPORTS RECORD CASELOAD

21 November 2019: In a press release issued during the Dubai Arbitration Week, the DIFC-LCIA Arbitration Centre ("**DIFC-LCIA**") published its caseload statistics for 2018, reporting the highest-ever number of cases filed at the centre.

According to the press release, the DIFC-LCIA said that in 2018 it received 68 requests for arbitration and mediation – a 25% increase on the previous year and a four-fold increase on the 17 cases registered in 2015. The DIFC-LCIA also revealed that the total value of claims registered with the centre in 2018 exceeded AED 2 billion (US$600 million) – and as of October 2019, the year's caseload value already totalled AED 4.4 billion (US$1.2 billion).

THE EUROPEAN UNION – SINGAPORE FREE TRADE AGREEMENT ("EUSFTA")

21 November 2019: Following negotiations which began in 2009, the EUSFTA was finally signed in October 2018, and approved by the Council of the EU on 8 November 2019. The EUSFTA, comprising the EUSFTA and the EU Singapore Investment Protection Agreement ("**EUISPA**") entered into force on 21 November 2019. This is the first FTA between the EU and an ASEAN country.

During the course of negotiations, the EU Commission and Singapore chose to split the EUSFTA into two agreements – the EUSFTA and the EUISPA. The former deals with trade and FDI liberalisation, while the latter covers investment protection under the relatively new investment court system ("**ICS**"). The ICS has replaced investor-state arbitration mechanisms that have been the default ISDS mechanism in investment treaties in recent history.

The ICS framework envisages: (i) a permanent Investment Tribunal of First Instance, and an Appellate Tribunal, (ii) tribunal members to be appointed to a standing panel in advance by the two state signatories (EU and Singapore), as opposed to each party's (investor's and state's) selection of arbitrators only after the arbitration has been commenced and (iii) proceedings to be fully transparent – case documents to be made publicly available, hearings not *in camera* and also mechanisms to allow interested third parties to make appropriate submissions.

LAUNCH OF ICC REPORT ON THE ARBITRATION OF CLIMATE CHANGE DISPUTES

28 November 2019: The International Chamber of Commerce Task Force on Arbitration of Climate Change Related Disputes released their report on "Resolving Climate Change Related Disputes through Arbitration and ADR". The purpose of the report is to examine the role for arbitration and ADR in the resolution of international disputes related to climate change.

The report first defines climate change related disputes and then explores the benefits of ICC arbitration and ADR services to resolve such disputes. The report considers the nature of these disputes and focuses on some features of the ICC Rules which can enhance existing procedures to effectively adjudicate climate change-related disputes, including the expertise of arbitrators and experts, the measures and procedures to expedite early or urgent resolution, the application of climate change commitments and/or law, transparency and third party participation.

ICC INTERNATIONAL COURT OF ARBITRATION REPORTS CASELOAD FIGURES FOR 2019

10 January 2020: The ICC International Court of Arbitration released a statement on its 2019 caseload figures, reporting the second highest number of new cases since the court was established in 1923. The ICC registered 869 new cases in 2019 – up from 842 in 2018.

Of those registered in 2019, 851 cases were filed under the ICC Arbitration Rules, while 18 were lodged under its specialised rules for when the ICC acts as appointing authority. Last year, the ICC Court scrutinised 664 draft arbitral awards in over 160 court sessions. It also administered 23 emergency arbitrator applications, bringing the total number of emergency arbitration cases to 117 since the ICC first introduced the service in 2012.

Case Law Updates

THE LAW ON ANTI-ENFORCEMENT INJUNCTIONS IN SINGAPORE

12 February 2019: The Singapore Court of Appeal ("**CA**") in yet another judgment provided some guidance as to the appropriate circumstances which could warrant the grant of an anti-enforcement injunction. In *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732, the CA declined to grant Hilton an anti-enforcement injunction, primarily on the basis that Hilton had waited too long before seeking this relief from the courts. Instead, the CA opined that Hilton should have sought the anti-suit / anti-enforcement relief before participating substantively in the Maldivian court proceedings dealing with the same facts and claims as in the concluded, underlying arbitration. In order for an anti-enforcement injunction to be granted, there had to be exceptional circumstances that warranted the exercise of the court's jurisdiction, such as fraud and instances where the applicant had no knowledge that the foreign judgment was being sought, until after it was rendered. The CA's ruling in this case provides some interesting guidance on the relatively new tool that is anti-enforcement injunctions.

RAISING JURISDICTIONAL ARGUMENTS TO SET ASIDE AN AWARD AS A NON-PARTICIPATING PARTY

09 May 2019: The Singapore Court of Appeal ("**CA**") overturned the High Court's decision in *Rakna Arakshaka Lanka Ltd ("**RALL**") v Avant Garde Maritime Services (Pte) Ltd* [2019] SGCA 2 SLR 131, annulling the award of the underlying arbitration between parties on jurisdictional grounds. The CA found that even though the applicant RALL had not participated in the underlying arbitration nor actively prosecuted its objections to jurisdiction before the tribunal, this did not cause RALL to lose the ability to argue against jurisdiction as a grounds for setting aside the arbitral award. The upshot of the CA's decision is that it may be easier for a non-participating respondent in an arbitration (with even a poor jurisdictional objection) to delay proceedings by (i) refusing to participate in the underlying arbitration and then (ii) raising its jurisdictional complaints subsequently before the curial court.

HIGHER REGIONAL COURT OF MUNICH RULES ON ADMISSIBILITY IN STATE COURTS OF APPLICATIONS TO DECLARE ARBITRATOR APPOINTMENTS INVALID

26 June 2019: Contrary to its earlier case law the Higher Regional Court of Munich (Oberlandesgericht München), case no. 34 SchH 6/18, held that disputes between parties as to whether the appointment of arbitrators is valid and whether the agreed appointment procedure has been adhered to are not admissible in state courts on the basis of section 1035 para. 4 of the German Code of Civil Procedure (ZPO). Section 1035 para. 4 of the German Code of Civil Procedure only provides for a state court's assistance if the parties have agreed on a specific appointment procedure which, however, is not successful. Once the tribunal has been constituted, section 1035 para. 4 of the German Civil Code of Procedure is no longer applicable. The court reasons that state court intervention is limited and that errors in the formation of the arbitral tribunal may be asserted in the setting aside proceedings with the limitation that these errors actually had an effect on the award itself.

GERMANY'S FEDERAL COURT OF JUSTICE RULES ON RIGHT TO BE HEARD BY ARBITRAL TRIBUNAL

18 July 2019: The German Federal Court of Justice (Bundesgerichtshof), case no. I ZB 90/18, held that a case may not be referred back to the arbitral tribunal according to section 1059 para. 4 of the German Code of Civil Procedure (ZPO) if this has only been applied for by one party and if the arbitral award was set aside due to a serious violation of a party's right to be heard. A party's right to be heard requires the arbitral tribunal to understand and grasp the substantial elements of a party's reasoning and to decide upon these in its decision.

HONG KONG COURT OF FIRST INSTANCE ("HKCFI") SETS ASIDE AWARD INSTEAD OF REMITTING A SECOND TIME

24 July 2019: In *P v M* [2019] HKCFI 1864, in a rare and notable second judgment on a remitted arbitration award, the HKCFI set aside portions of an arbitral award on the basis of serious irregularity.

As reported in Mayer Brown's January 2019 International Arbitration Update, the HKCFI previously remitted an interim award ("**First Award**") to the arbitrator for reconsideration on grounds that it had been issued on a basis that neither party had advanced during arbitration, constituting a serious irregularity resulting in substantial injustice.

After re-considering the remitted First Award, the arbitrator reached the same conclusions in his second award ("**Second Award**"), but for different reasons. In doing so he relied on new material raised by the claimant, and made further findings going beyond the new case advanced by the claimant on remission. The respondent challenged the Second Award on the same grounds as the First Award.

The HKCFI found that the respondent had not been given an opportunity to properly address the matters on which the arbitrator had based the Second Award, which would have required further evidentiary hearings. Further, the arbitrator had made findings in the Second Award which contradicted decisions in the First Award which had not been remitted for reconsideration. In so doing, the arbitrator had both exceeded its powers / failed to conduct proceedings in accordance with the procedure agreed by the parties and directed by HKCFI, and had, once again, deprived the respondent of a reasonable opportunity to present its case.

The HKCFI took the view it was inappropriate to remit the second award to the arbitrator for reconsideration a third time and the tainted portions of the award were permanently set aside on the ground that there is no basis on which they could possibly be reinstated.

This judgment again provides valuable guidance on the balance that needs to be struck between finality of arbitration and the need for a robust supervisory jurisdiction to ensure that the arbitration process does not transgress key principles of procedural fairness.

ENGLISH COURT ADJOURNS APPLICATION TO ENFORCE NIGERIAN ARBITRAL AWARD PENDING APPLICATION IN THE NIGERIAN COURTS

13 August 2019: In *AIC Limited v The Federal Airports Authority of Nigeria* [2019] EWHC 2212, the English Court adjourned an application made by AIC Limited ("**AIC**"), a Nigerian construction and property development company, to enforce a Nigerian arbitral award pursuant to the New York Convention worth approximately $123 million (including accrued interest) made in its favour against the Federal Airports Authority of Nigeria. The reason for the stay in enforcement was to allow the outcome of long-running court proceedings in Nigeria, concerning the validity of the original arbitral award. Veronique Buehrlen QC (sitting as a Deputy High Court Judge) said that although the award lay "*towards the 'manifestly valid' i.e. top end of the scale, in which significant further delay* [was] *likely to ensue and in which some element of prejudice to AIC will result from a continuing delay in enforcement*", that had to be balanced against other factors (e.g., avoid conflicting judgements). She considered that the factors militating against such an adjournment could be addressed by the provision of security, which she awarded in the sum of approximately $24 million (equivalent to half of the original award).

FIFTH CIRCUIT RULES PARTIES DID NOT DELEGATE ARBITRABILITY DETERMINATION TO ARBITRATOR

14 August 2019: In *Archer & White Sales, Inc. v. Henry Schein, Inc.*, 935 F.3d 274 (5th Cir. 2019), the United States Court of Appeals for the Fifth Circuit ruled that the parties' arbitration agreement did not evince a "clear and unmistakable" intent to delegate the question of arbitrability to an arbitrator.

Archer and White Sales, Inc. ("**Archer**") sued Henry Schein, Inc. ("**Henry Schein**") in federal district court for alleged antitrust violations. Henry Schein filed a motion to compel arbitration under the parties' agreement, which required that "[a]ny dispute arising under or related to this Agreement (except for actions seeking injunctive relief . . .), shall be resolved by binding arbitration in accordance with the arbitration rules of the American Arbitration Association." A magistrate judge granted the motion, concluding that the question of arbitrability of the claims itself belonged to an arbitrator. The district court, and subsequently the Fifth Circuit, disagreed. The Fifth Circuit determined that because the assertion of arbitrability was "wholly groundless," a court was not required to submit the issue of arbitrability to an arbitrator. The United States Supreme Court reversed, ruling that the Fifth Circuit's employed "wholly groundless" exception was "inconsistent with the statutory text [of the Federal Arbitration Act] and with our precedent." The Supreme Court remanded back to the Fifth Circuit the issue of whether the parties' contract delegates the arbitrability question to an arbitrator.

Archer asserted that its claims fell within the arbitration clause's carve-out for actions seeking injunctive relief and therefore the AAA rules, including AAA Rule 7(a), did not apply. Henry Schein argued that the AAA rules did apply because the carve-out for actions seeking injunctive relief does not trump the parties' delegation, and to read the contract as Archer suggests would require the court to inappropriately make a merits determination about the scope of the carve-out—whether its claims constitute an action seeing injunctive relief. The Fifth Circuit sided with Archer. It held that the "plain language" of the arbitration clause exempted disputes "under the carve-out," and therefore did not incorporate the AAA rules for such disputes. It held that "The most natural reading of the arbitration clause at issue here states that any dispute, except actions seeking injunctive relief, shall be resolved in arbitration in accordance with the AAA rules...Given that carve-out, we cannot say that the [contract] evinces a 'clear and unmistakable' intent to delegate arbitrability."

Notably, the court pointed out that, under Fifth Circuit precedent, "[a] contract need not contain an express delegation clause" to provide "clear and unmistakable evidence that the parties agreed to arbitrate arbitrability"; instead, incorporation by reference of the AAA rules will generally be enough. But the better practice for parties who wish to delegate all questions of arbitrability to an arbitrator—including disputes over the scope of an arbitration agreement and any exemptions to that coverage—is to include an express delegation clause rather than rely on incorporation by reference of AAA rules: "The parties could have unambiguously delegated this question, but they did not, and we are not empowered to re-write their agreement."

BRAZILIAN SUPERIOR COURT OF JUSTICE RULES THAT ARBITRATION CLAUSES CANNOT BE DISMISSED BY CONSUMER PROTECTION CODE

29 August 2019: In Sonangol Hidrocarbonetos Brasil Ltda. v TPG Indústria e Comércio Ltda. – Resp no. 1.598.220, the Brazilian Superior Court of Justice ("STJ") ruled that an arbitration clause cannot be dismissed by the rules of the Consumer Protection Code ("CDC") and arbitral tribunals must rule on the validity of the arbitration agreement prior to a Brazilian judicial court under the Kompetenz-Kompetenz principle. Even though the contract was based on a standard form, STJ concluded that the agreement was entered into between two companies operating in gas energy exploration, a sector whose complexity makes it impossible to determine if there was an economic imbalance between the parties that would allow the application of the CDC rules by analogy. Therefore, STJ confirmed the validity of the arbitration clause entered into between the parties—and its pro-arbitration stance.

COURT OF APPEALS OF THE STATE OF SÃO PAULO DENIES THE PRODUCTION OF EVIDENCE PRIOR TO ARBITRATION

05 September 2019: In São Pedro Transmissora de Energia S.A. v GE Power Conversion Brasil Ltda. – AI no. 2119783-88.2019.8.26.0000, the Court of Appeals of the State of São Paulo found that urgency is a prerequisite to produce evidence prior to arbitration. As the parties executed and committed to abide by an arbitration agreement, any evidence the parties intend to produce shall be requested before an arbitral tribunal. Thus, the Court denied the request for production of evidence and ruled that evidence must be produced in an arbitration proceeding. This case is a relevant precedent to Brazilian case law, as it underscores the parties' commitment to arbitrate.

SPAIN CHALLENGES ENTIRE TRIBUNAL IN INTRA-EU CASE

05 September 2019: In *Landesbank Baden-Württemberg and others v Kingdom of Spain* (ICSID Case No. ARB/15/45), Spain filed a proposal to disqualify all three members of the ICSID tribunal which is currently hearing an Energy Charter Treaty Claim filed by a group of German banks against Spain for abolishing its subsidy regime for renewable energy plants to promote foreign investments. Earlier, the tribunal had rejected an objection by Spain arguing that based on the *Achmea* decision of the European Court of Justice intra-EU investment disputes under the ECT would be precluded.

THE HONG KONG COURT OF FIRST INSTANCE ("HKCFI") PROVIDES GUIDANCE ON WHAT AN ARBITRAL TRIBUNAL IS REQUIRED TO DO TO GIVE THE PARTIES A "REASONABLE OPPORTUNITY" TO PRESENT THEIR CASE

16 September 2019: in *N v C* [2019] HKCFI 2292, the plaintiff applied to set aside a Hong Kong arbitral award ("**Award**") on the ground of serious irregularity. In rejecting the plaintiff's application, the HKCFI provided guidance on what an arbitral tribunal is required to do to give the parties a "*reasonable opportunity*" to present their case under the Arbitration Ordinance (Cap. 609). The HKCFI emphasised the distinction between a lack of opportunity for a party to deal with a case and the failure of a party to recognise or take such an opportunity. It is sufficient if the point upon which the tribunal based its Award was "*in play*" or "*in the arena*" in the proceedings, even if the point was not precisely articulated. Ultimately, the question of whether a party has been given a "*reasonable opportunity*" to present its case is one of fairness, and this question will always be a one of fact and degree depending on the particular facts of the case.

The HKCFI found that the factual issue of whether the parties had reached an agreement to allow the defendant to claim loss and expense for any extension of time granted under a construction contract had been sufficiently put in issue by the parties' pleadings in the arbitration and by the extensive factual evidence advanced before the tribunal. As such, the plaintiff had been given a fair, and therefore, reasonable opportunity to advance its case on this issue and the Award was not tainted by any serious irregularity.

SIXTH CIRCUIT ALLOWS USE OF 28 U.S.C. § 1782 PROVISIONS FOR DISCOVERY IN PRIVATE COMMERCIAL ARBITRATION

19 September 2019: *In re Application to Obtain Discovery for Use in Foreign Proceedings*, 939 F.3d 710 (6th Cir 2019), the Sixth Circuit held that 28 U.S.C. § 1782's provision allowing for discovery, "for use in a proceeding in a foreign or international tribunal" could be utilised by parties in a private commercial arbitration. The decision arose when, during the course of foreign commercial arbitration, a Saudi corporation attempted to use 28 U.S.C. § 1782 to obtain discovery regarding a U.S. company for use in the foreign arbitration. The question before the Court was whether 28 U.S.C. § 1782's use of the words "foreign or international tribunal" included private arbitration panels. Based upon the language of the statute, the Court found that 28 U.S.C. § 1782's use of the word "tribunal" was intended to encompass private commercial arbitration panels.

This decision represents a departure from decisions in both the Second and Fifth Circuits. Both the Fifth Circuit in *Republic of Kazakhstan v. Biedermann Int'l*, 168 F.3d 880, and the Second Circuit in *National Broadcasting Co., Inc. v. Bear Stearns & Co., Inc.*, 165 F.3d 184 ruled that 28 U.S.C. §1782 applied only to state-sponsored adjudicatory

bodies such as conventional courts and governmental arbitral tribunals, not private commercial arbitration panels. Given the disagreement among the circuit courts on this issue, it will be left to the U.S. Supreme Court or Congress to resolve the issue.

GERMANY HIT WITH ECT CLAIM OVER CHANGES TO RENEWABLES REGIME

20 September 2019: In the case of *Strabag SE, Erste Nordsee-Offshore Holding GmbH and Zweite Nordsee-Offshore Holding GmbH v Germany* (ICSID Case No. ARB/19/29), Austrian engineering company Strabag filed an Energy Charter Treaty claim against Germany over changes to the laws on renewable energy that are claimed to impair its development rights for offshore wind farms in the German North Sea. It is suspected that the claim is based on changes made to the German Renewable Energy Sources Act which introduced a new tariff auction system run by the German Federal Grid Agency under which a developer offering the cheapest rates would be awarded development rights for offshore wind farms.

ENGLISH COURT RULES ON SECURITY FOR COSTS AND CLAIM IN A $1.2 BILLION ARBITRAL AWARD SET ASIDE PROCEEDING

27 September 2019: In *BSG Resources Limited v Vale S.A. et al.* [2019] EWHC 2456 (Comm), the High Court of Justice granted an application by Brazilian mining company Vale S.A. ("**Vale**") for security for costs, but dismissed its attempt for security for claim, in a set aside proceeding brought by BSGR mining company ("**BSGR**") against a $1.2 billion LCIA arbitral award. Under Section 70(6) of the English Arbitration Act 1996 ("**EAA**"), the court ordered BSGR to provide, by way of security for costs, the sum of $510,000. Although Vale had estimated its costs of $880,000 for a two-day hearing, Moulder J found this amount not "*reasonable and proportionate*". The court, however, rejected Vale's attempt for security for claim. According to Section 70(7) of the EAA and based on the opinion given by Picken J in *Progas v Pakistan* [2018] EWHC 209 (Comm), the English court stated that Vale failed to demonstrate "*that the challenge in some way prejudices the ability of the defendant to enforce the award or diminishes the claimant`s ability to honour the award (…)*", e.g. by a risk of dissipation of assets.

ENGLISH COURT UPHELD AWARD IN BILLION DOLLAR DISPUTE OVER QATARI HOSPITAL

02 October 2019: In *Obrascon Huarte Lain Sa (T/A Ohl Internacional) & Anor v Qatar Foundation For Education, Science & Community Development* [2019] EWHC 2539 (Comm), the English court has upheld an ICC award that found the Qatari state-backed foundation validly terminated a contract for the construction of a £1.9 billion medical facility in Doha. The claimants challenged the award on the basis of serious irregularity under Section 68 of the English Arbitration Act 1996, arguing that in its ruling on the termination issue, the tribunal had breached its "general duty" to act fairly and impartially and had deprived them of a reasonable opportunity of putting forward their case. This challenge was ultimately dismissed.

ENGLISH COURT UPHOLDS INTERIM ANTI-SUIT INJUNCTION IN INSURANCE DISPUTE

11 October 2019: Being "*satisfied to a high degree of probability that the parties have agreed to submit their dispute to arbitration*", Knowles J decided to continue an interim anti-suit injunction and confirmed jurisdiction to enforce a London arbitration agreement concerning an insurance dispute. In *Hiscox et al. v Weyerhaeuser Co.* [2019] EWHC 2671 (Comm), the court upheld an interim anti-suit injunction to restrain the respondent from litigating before the US courts. Noting that this case was an interim hearing and that the parties are "*significant and experienced businesses*", Knowles J advised them to proceed to arbitration rather than taking the dispute to trial and to a final decision. This case concerned a dispute between the parties regarding the extent of the respondent's insurance cover. The lead underlying policy contained a clause providing for all disputes to be determined in London under the English Arbitration Act. However, the respondent began various proceedings against the claimants in the US Courts and sought declaration that there was no valid arbitration agreement. The claimants initially obtained an interim anti-suit injunction before the English courts which has been upheld by the decision under analysis.

ENGLISH COURT DECIDES AWARD ON COSTS FALLS WITH SUBSTANTIVE AWARD

21 October 2019: In *Andrew Martin et al. v Michael Harris* [2019] EWHC 2735 (Ch), the High Court of Justice confirmed that when a substantive arbitral award is annulled, the award on costs associated to it shall also be set aside. In this case, the English court had granted the claimants' appeal under Section 69 of the English Arbitration Act 1996 against an arbitral award – the "**Final Award Part I**", as named by the arbitrator – on the merits of a partnership dispute (see *Andrew Martin et al. v Michael Harris* [2019] EWHC 1962 (Ch)). However, between the filing of the appeal and the court's decision, the arbitrator rendered a costs award – the "**Final Award Part II**", as named by the arbitrator. Although the respondent argued that the court had no jurisdiction in relation to the Final Award Part II, the English court held that whether costs were dealt with in the main award or in a separate award, any decision on costs stands or falls with the substantive award. The English court noted that the nomenclature of the decisions indicated that the arbitrator viewed them as two parts of one single award.

NINTH CIRCUIT VACATES ARBITRATION AWARD FOR ARBITRATOR'S FAILURE TO DISCLOSE OWNERSHIP INTEREST IN JAMS

22 October 2019: In *Monster Energy Co. v. City Beverages, LLC*, Nos. 17-55813 & 17-56082, the Ninth Circuit held that a JAMS arbitrator's failure to disclose his direct ownership interest in the arbitration organisation and the organisation's extensive past business dealings with one of the parties created a reasonable impression of bias and warranted vacatur of the award under the Federal Arbitration Act, 9 U.S.C. § 10(a)(2). The court found that it was not enough for the arbitrator to generally disclose that he had an economic interest in the success of the arbitration organisation and that the organisation had conducted prior business with the parties. Rather, arbitrators must disclose the specific nature of their ownership interest, if any, in the arbitration organisations with whom they are affiliated with and those organisations' nontrivial business dealings with the parties.

The implications of this decision are that arbitrators will likely need to provide fuller disclosures before an arbitration and that parties should take a closer look at the neutrality of a potential arbitrator. There is, however, a concern that this ruling expands the "evident partiality" standard and will undermine the finality of arbitrations and cause more litigation aimed at overturning unfavourable arbitration awards.

THE HONG KONG COURT OF FIRST INSTANCE ("HKCFI") REAFFIRMS THE POSITION THAT WHILST ENFORCEMENT PROCEEDINGS CANNOT BE FILED IN BOTH CHINA AND HONG KONG AT THE SAME TIME, THE LIMITATION PERIOD KEEPS RUNNING

24 October 2019: In *Wang Peiji v Wei Zhiyong* [2019] HKCFI 2593, the HKCFI reaffirmed its own decision in *CL v SCG* [2019] HKCFI 398, which was reported in Mayer Brown's July 2019 International Arbitration Update. In both *Wang Peiji* and *CL v SCG*, the HKCFI held that the running of limitation periods will not be suspended under Hong Kong law during the time a party seeks to enforce an arbitral award in Mainland China.

This decision further highlights the difficulties with the Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region: 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.

Further, the HKCFI held that the fact that the plaintiff had been partially successful in its attempts to enforce the award in Mainland China made no difference. Despite the plaintiff's argument that it could not, in such circumstances, have been expected to halt enforcement proceedings in China, the HKCFI stated that the law was clear that limitation periods would not stop running under Hong Kong law.

Wang Peiji demonstrates that procedural obstacles to enforcement of arbitral awards, whether made in Hong Kong or Mainland China, continue to remain.

HONG KONG COURT OF APPEAL ("HKCA") CLARIFIES INTERFACE BETWEEN INSOLVENCY REGIME AND ARBITRATION

02 August and 01 November 2019: In two cases (*But Ka Chon v Interactive Brokers LLC* [2019] HKCA 873 ("***BKC***") and *Sit Kwong Lam v Petrolimex Singapore Pte Ltd* [2019] HKCA 1220 ("***SKL***")) the Hong Kong Court of Appeal ("**HKCA**") refused to grant stays to arbitration in respect of winding-up petitions and, in doing so, addressed the interaction between insolvency proceedings and arbitration casting doubt on the Hong Kong case of *Lasmos Limited v Southwest Pacific Bauxite (HK) Limited* [2018] HKCFI 426 ("***Lasmos***").

Prior to *Lasmos,* a winding-up petition based on the insolvency of a debtor would not be stayed to arbitration even if the debt arose from an agreement containing an arbitration clause. *Lasmos* changed this position, providing that a stay would be appropriate if (i) the debt was disputed; (ii) the underlying agreement contained an arbitration clause; and (iii) the debtor took the steps required under the arbitration clause to commence arbitration.

In both *BKC* and *SKL*, the alleged debtors sought a stay to arbitration in respect of a winding-up petitions based on the *Lasmos* test. The HKCA held that the alleged debtors had not met *Lasmos* conditions (iii) and (ii) respectively, and so a stay to arbitration could only be provided at the discretion of the court under Hong Kong insolvency legislation. The two cases suggest that the *Lasmos* approach is open to question, and, in any event, set a high bar for obtaining a stay to arbitration in respect of winding up petitions. In doing so, these cases reaffirm, to some extent, the traditional position in Hong Kong regarding winding-up and insolvency petitions based on underlying agreements with arbitration clauses.

INCORRECT SEAT OF ARBITRATION AND THE SINGAPORE COURT OF APPEAL'S REFUSAL TO ENFORCE AN ARBITRAL AWARD

18 November 2019: In a cautionary tale for parties to ensure that the seat of the arbitration is correct and in accordance with the arbitration agreement in question, the Singapore Court of Appeal ("**CA**") in *ST Group Co Ltd and others v Sanum Investments Limited and another [2019] SGCA 65* refused to enforce a SIAC arbitration award on the basis that the selection of the seat of the arbitration was incorrect. In so doing, the CA reversed the High Court's decision upholding the award.

Parties had signed multiple agreements, two of which contained dispute resolution clauses different to each other. The first, a Management Agreement, specified that arbitration should be conducted "using an internationally recognised mediation / arbitration company in Macau, SAR PRC", while the second, a Participation Agreement, specified that arbitration should be conducted using an internationally recognised mediation / arbitration company at the SIAC. The Tribunal proceeded to accept jurisdiction over the whole dispute pursuant to the SIAC arbitration agreement in the Participation Agreement and issued its award. However, the CA found that the dispute arose out of an alleged breach of the Master Agreement and not the Participation Agreement, and that the seat of arbitration should have been in Macau, not in Singapore. As such, the CA held that once an arbitration is wrongly seated, in the absence of any waiver, arbitral awards arising therefrom should not be recognised and enforced – without the need to show actual prejudice resulting from the designation of the wrong seat.

Firm Updates

May 2019: B. Ted Howes was ranked for the 2nd consecutive year as a "Noted Practitioner" by *Chambers USA*.

June 2019: *Legal 500* ranked Mayer Brown's U.S. International Arbitration practice in the top Tier 4 for the 3rd year in a row.

August 2019: Gustavo Fernandes de Andrade (Rio de Janeiro) and João Marçal Martins (São Paulo) are part of the faculty of PUC-Rio's postgraduate course "Commercial Arbitration and Consensual Conflict Resolution Methods", which began in August 2019.

August 2019: B. Ted Howes was promoted to "Fellow" status by the Chartered Institute of Arbitrators.

14 August 2019: Tauil & Chequer Advogados in association with Mayer Brown hosted the event "Coffee with the ICC Arbitration Court Secretariat - What You Always Wanted to Know About ICC Arbitration" in the São Paulo office. The event, moderated by Gustavo Fernandes de Andrade (Rio de Janeiro) and Gustavo Scheffer da Silveira (São Paulo), was attended by the Deputy General Counsel of the ICC Arbitration Court, Ana Serra e Moura, and the ICC Court Counselor in the Brazilian office, Patrícia Figueiredo Ferraz.

15 August 2019: Mayer Brown announced that Chicago litigation partner Sarah Reynolds has been appointed to the executive board of the Silicon Valley Arbitration and Mediation Center (SVAMC) and is acting as the Chair of the Marketing Committee. SVAMC is an independent institution with the objective of promoting business-practical dispute resolution in the global technology sector.

20 August 2019: Mayer Brown announced that Law360 has once again included the firm in the publication's "Global 20" list, which recognises 20 global law firms that are "trusted by clients to handle their most challenging cross-border matters, from multibillion-dollar mergers to bet-the-company litigation." Mayer Brown has been named every year since the list's inception in 2010.

22-24 August 2019: Gustavo Fernandes de Andrade (Rio de Janeiro) participated as speaker on the panel "Peculiarities of Arbitral Procedures Involving Public Administration", at the "18th International Arbitration Congress" of the Brazilian Arbitration Committee (CBAr) held in Brasília, Brazil.

03 September 2019: Mayer Brown announced that Chicago litigation partner Sarah Reynolds has been appointed to the executive board of the North American Chapter of the Chartered Institute of Arbitrators and is acting as the Northern California Chair.

October 2019: Gustavo Scheffer da Silveira (São Paulo) was included in the list of arbitrators of the Brazilian Center of Mediation and Arbitration (CBMA).

October 2019: João Marçal Martins (São Paulo) was included in the list of arbitrators of CAMES Brasil.

10 October 2019: Mayer Brown announced that Hong Kong shipping litigation partner Bill Amos has been chosen as one of the eight founding full members of the Hong Kong Maritime Arbitration Group (HKMAG). HKMAG is an independent institution with the objective of promoting Hong Kong as an international maritime centre.

11 October 2019: Gustavo Fernandes de Andrade (Rio de Janeiro) participated as a speaker at the event "Arbitration in Expropriation Actions" of the Brazilian Bar Association (Rio de Janeiro Section), in Rio de Janeiro, Brazil.

21-22 October 2019: Gustavo Fernandes de Andrade (Rio de Janeiro) participated as a speaker at the 6th CAM-CCBC Arbitration Congress in São Paulo, Brazil.

28 October 2019: Gustavo Fernandes de Andrade (Rio de Janeiro) was interviewed by LexLatin Brasil to comment on the enactment of the Brazilian federal decree that established the use of arbitration to solve problems arising out of concession contracts.

09 December 2019: B. Ted Howes was appointed to a three-year term on the Hong Kong International Arbitration Centre's List of Arbitrators.

Mayer Brown Key Upcoming Events

10 January 2020: Gustavo Fernandes de Andrade (Rio de Janeiro) was a moderator at a conference hosted by Arbitration and Public Administration - CBAr in São Paulo, Brazil.

23 January 2020: Kwadwo Sarkodie will speak at the Africa Summit on Investments & Projects in Brazil conference which is being hosted in our London office.

20-24 January: Sarah Reynolds will speak on issues in international arbitration at the JOI seminar focused on International Construction Dispute Resolution: Managing Risk Abroad.

31 January – 1 February 2020: Alina Leoveanu (Paris) will speak about Arbitration Agreement, Arbitrability and Case strategy during Workshop I organized by ICC Poland WAW (Warsaw Arbitration Workshops).

05 February 2020: Yu-Jin Tay (Singapore) will be speaking at a SIAC conference in Abu Dhabi.

05 February 2020: Dany Khayat (Paris) will speak about the evolution of ICSID arbitration at the round table and book launch of The ICSID Convention, Regulations, and Rules: A Practical Commentary.

07 February 2020: Alina Leoveanu (Paris) will speak about the efficiency of arbitral proceedings at the upcoming ICC Conference in Dakar, Sénégal: L'Afrique et l'Arbitrage CCI.11-12 February 2020: Sarah Reynolds will be speaking on two topics; "Arbitrating the Patent/Technology Case – Phase II: Arbitrator Selection" and "Arbitrating the Patent/ Tech case - Phase VI: Enforcing and Attacking Awards in Patent Cases" at a two-day comprehensive advocacy training course on patent and technology arbitration and mediation for litigation counsel being held at the Silicon Valley Arbitration and Mediation Center.

16-17 February 2020: Dany Khayat (Paris) will moderate the panel on "Arbitrating M&A disputes in the MENA" at the upcoming 8th ICC MENA Conference on International Arbitration in Dubai.

27 February 2020: Sarah Reynolds will speak on a panel hosted by the Young ITA at Pepperdine's Campus. The panel will provide a brief overview of the Restatement of the US Law of International and Investor-State Arbitration. 18 May 2020: Dany Khayat (Paris) and Prof. Diego P. Fernandez Arroyo (Sciences Po) will organize a new edition of the Sciences Po Mayer Brown Lecture in Paris. The keynote speaker will be Professor Pierre Mayer.

19-20 June 2020: Alina Leoveanu (Paris) will speak about Post-hearing Briefs, Awards and Costs determination during Workshop VI organized by ICC Poland WAW (Warsaw Arbitration Workshops).

We are currently in the process of planning a number of events to take place throughout 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

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

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

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

20 September 2019 : Gustavo Fernandes de Andrade (Rio de Janeiro) participated in the "XIV Forum IBEF Oil Gas & Energy", in Rio de Janeiro, Brazil.

25 September 2019: Gustavo Fernandes de Andrade (Rio de Janeiro) spoke in an event about Arbitration and Dispute Board in Latin America. He moderated the panel "*A Arbitragem com a Administração Pública na América Latina*" (Arbitration with Public Administration in Latin America).

26-27 September 2019: Alina Leoveanu (Paris) spoke at the International Colloquium organized by Université Paris II Panthéon – Assas on Actors in International Investment Law: Beyond Claimants, Respondents and Arbitrators. Alina's topic was focused on "Mediating with States under the ICC Mediation Rules".

27 September 2019 : Gustavo Fernandes de Andrade (Rio de Janeiro) participated in the event: "Agribusiness Seminar", in Goiânia, Brazil.

30 September 2019: João Marçal Martins (São Paulo) gave a lecture on "Negotiation of Arbitration Agreements" at the Brazilian Bar Association and Brazilian Center of Mediation and Arbitration Course, in Rio de Janeiro, Brazil.

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

02-04 October 2019: Alina Leoveanu (Paris) spoke at the Dispute Resolution Board Foundation's conference in Stockholm. The DRBF is the world's leading organization for Dispute Boards. The conference theme was "Stay in Control – Successfully manage project cost, schedule and performance risks".

11 October 2019 : Gustavo Fernandes de Andrade (Rio de Janeiro) spoke at the event: "Arbitration in Expropriation Actions", in Rio de Janeiro, Brazil.

14 October 2019: Gustavo Fernandes de Andrade (Rio de Janeiro) spoke at the ICC Arbitration Rules Workshop (Workshop sobre as regras de arbitragem do ICC).

17 October 2019: Dany Khayat (Paris) moderated the workshop on "International Dispute Resolution: is compliance a game changer? How can we limit criminal and reputational risk?" during the Business & Legal Forum.

17 October 2019: Gustavo Scheffer da Silveira (São Paulo) spoke at the event "International Congress on Construction Law", organised by the Chilean Society of Construction Law, in Santiago, Chile.

21 October 2019: Tauil & Chequer in association with Mayer Brown sponsored the *VI Congresso CAM-CCBC de Arbitragem* (VI Congress CAM-CCBC of arbitration) in São Paulo, Brazil.

22 October 2019: Gustavo Scheffer da Silveira (São Paulo) spoke at the event hosted by the Very Young Arbitration Practitioners Brazil, during the São Paulo Arbitration Week, in São Paulo, Brazil.

23 October 2019: Gustavo Scheffer da Silveira (São Paulo) spoke at the Young ICCA Workshop on Cross-Examination presided by Gabrielle Kaufmann-Kohler, during the São Paulo Arbitration Week, in São Paulo, Brazil.

23 October 2019: B. Ted Howes (New York) and James R. Ferguson (Chicago) spoke at a CLE webinar on: *IP and IT License Disputes in International Arbitration: Winning Strategies.*

24-25 October 2019 : Gustavo Fernandes de Andrade (Rio de Janeiro) participated in the event "Dispute Resolution in the International Oil & Gas Business", in Houston, Texas.

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

24 October 2019: João Marçal Martins (São Paulo) gave a lecture on "Negotiation and Persuasion" at the International Academy of Cinema Seminar, in Rio de Janeiro, Brazil.

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

28 October 2019: Amita Kaur Haylock (Hong Kong) moderated a diverse panel on 'Cross-Border Enforcement of Arbitral Awards in IP and Tech Disputes' at a conference co-hosted by the SVAMC and KCAB International in Seoul, South Korea.

07 November 2019: Alejandro Lopez Ortiz (Paris) spoke at the Conferencia Internacional Peru – Espana "*Reencuentro de dos mundos arbitrales*" held in Lima, Peru. Alejandro's topic was the extension of the arbitration agreement to non-signatory parties.

07 November 2019: Alina Leoveanu (Paris) and Dr Crina Baltag held an ICC Arbitration and Mediation workshop in Romanian, in Bucharest, Romania, which was organized and hosted by Wolters Kluwer Romania.

14 November 2019: Mayer Brown's Chicago office hosted an informative lunch program with ICC International Court of Arbitration and the United States Council for International Business (USCIB/ ICC USA) on: *The Arbitrator Selection Puzzle: Putting the Pieces Together.*

19 November 2019: Mayer Brown's Washington DC office hosted a discussion with the Saudi Center for Commercial Arbitration (SCCA) on alternative dispute resolution services in the Middle East region. B. Ted Howes (New York) provided the opening remarks and welcome statement.

21 November 2019: Alain Farhad (Dubai) spoke at GAR Live Dubai on "The reasoning of arbitral awards and Res Judicata".

27 November 2019: Dany Khayat (Paris) addressed the latest trends and developments in the Middle East during session three of the 7th Annual Global Arbitration Review in Paris.

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

28 November 2019: The Paris office of Mayer Brown hosted and co-organized with Queen Mary University of London the 9th edition of Le Café des Arbitres. The conference theme was The Role of State Courts' Decisions in Arbitral Proceedings. Dany Khayat (Paris) moderated the panel on international investment arbitration and Professor Loukas Mistelis moderated the international commercial arbitration panel. The event was also live streamed on YouTube.

03 December 2019: Ulrich Helm (Frankfurt) moderated a panel discussion on Contract Administration and Dispute Avoidance from an International Contractor's Perspective at the FIDIC International Contract Users' Conference in London. The panel session assembled seasoned international contractors and in-house contract specialists from large infrastructure and engineering firms discussing critical areas of contract administration and latest trends in dispute management and avoidance.

04 December 2019: Gustavo Fernandes de Andrade (Rio de Janeiro), Gustavo Scheffer da Silveira (São Paulo) and João Marçal Martins (São Paulo) participated in the meeting of the Arbitration and Mediation Commission of the ICC Brazil, in São Paulo, Brazil.

Mayer Brown Publications

CONSTRUCTION ARBITRATION IN CENTRAL AND EASTERN EUROPE

12 May 2019: Partner Alejandro López Ortiz and associate Patricia Ugalde Revilla (both Paris) co-authored Chapter 4 on 'Multiparty Construction Projects: An Arbitration to Bind Them All?' in the newly published book on 'Construction Arbitration in Central and Eastern Europe' edited by Dr Crina Baltag and Cosmin Vasile. The book takes a close look at the contemporary topics in construction arbitration and related procedures, with a focus on Central and Eastern Europe and is a must read for any practitioner acting in this field.

To purchase the publication, click here.

MEDIATION IN INTERNATIONAL COMMERCIAL AND INVESTMENT DISPUTES

30 July 2019: Alina Leoveanu (Paris) co-authored Chapter V on "ICC Mediation: Paving the Way Forward" in the recently published book on 'Mediation in International Commercial and Investment Disputes' edited by Catharine Titi and Katia Fach Gomez.

To purchase the publication, click here.

3 THINGS GENERAL COUNSELS SHOULD KNOW ABOUT ENFORCING ARBITRAL AWARDS

23 August 2019: B. Ted Howes (New York) is quoted in this article by *Law360*.

To read the full article, click here.

CONSIDERATIONS ON THE AWARD ON THE ARBITRAL COMPETENCE

September 2019: Gustavo Scheffer da Silveira (São Paulo) published an article in the Brazilian Journal of Arbitration of the Brazilian Arbitration Committee (CBAr) (also published by Kluwer Law International) entitled "The award on the arbitral competence: nature and setting aside control".

To read the full article, click here.

ARBITRATION RULING PIQUES SPONSORS' INTEREST

02 September 2019: ERISA Litigation partner Nancy Ross (Chicago) is quoted in this article by *Pensions & Investments*.

To read the full article, click here.

2 COURTS ISSUE 2 DIFFERENT RULINGS IN ARBITRATION CASES

02 September 2019: ERISA Litigation partner Nancy Ross (Chicago) is quoted in this article by *Pensions & Investments*.

To read the full article, click here.

ENGLISH HIGH COURT ADJOURNS APPLICATION TO ENFORCE NIGERIAN ARBITRAL AWARD PENDING APPLICATION IN THE NIGERIAN COURTS, BUT MAKES 'SUBSTANTIAL' INTERIM SECURITY ORDER

02 September 2019: Kwadwo Sarkodie and Thomas Ajose (both London) authored an article in *Lexology* relating to *AIC Limited v The Federal Airports Authority of Nigeria*, [2019] EWHC 2212.

To read the full article, click here.

OPINION: THE SHIFTING SANDS OF CONSTRUCTION IN THE MIDDLE EAST

03 September 2019: Raid Abu-Manneh (London), Alain Farhad (Dubai) and Ali Auda (London) authored an article in *Arabian Business* relating to the current trends in the values and lengths of time of construction disputes in the Middle East.

To read the full article, click here.

IS MANDATORY ARBITRATION LIKELIER FOR ERISA COMPLAINTS?

13 September 2019: ERISA Litigation partner Nancy Ross (Chicago) is quoted in this article by *PLANADVISER*.

To read the full article, click here.

LEGAL ABROAD: DOING BUSINESS IN DUBAI

19 September 2019: Alain Farhad (Dubai), Mark McMahon (London) and Ali Auda (London) authored an article in *Building* to consider the legal issues when operating businesses in Dubai.

To read the full article, click here.

BRAZILIAN DECREE ON ARBITRATION IN PUBLIC CONCESSIONS MEETS MARKET EXPECTATIONS

28 October 2019: In a Q&A interview for LexLatin Brasil, Gustavo Fernandes de Andrade (Rio de Janeiro) comments about the decree establishing the possibility of arbitration to solve problems related to infrastructure concession contracts.

To read the full article, click here.

SLOVAK REPUBLIC V ACHMEA B.V. (C.J.E.U.)

December 2019: Jawad Ahmad (London) published an article commenting on the decision by the Court of Justice of the European Union in *Slovak Republic v Achmea B.V.* (Case C-284/16). The article was released in the bimonthly International Legal Materials published by the American Society of International Law.

To purchase the publication, click here.

BRAZILIAN SPECIAL APPEAL NO. 1.639.035-SP, 18 SEPTEMBER 2018, PARANAPANEMA S/A VS/ BTG PACTUAL S/A AND SANTANDER BRASIL S/A

December 2019: Gustavo Scheffer da Silveira (São Paulo) comments the Brazilian Superior Court of Justice's Paranapanema decision, related to the extension of the arbitration agreement contained in the main contract to accessory contracts.

To purchase the publication, click here.

THE IMPACT OF SUMMARY DISPOSITION ON INTERNATIONAL ARBITRATION: A QUANTITATIVE ANALYSIS OF ICSID'S RULE 41(5) ON ITS TENTH ANNIVERSARY

05 December 2019: B. Ted Howes and Allison Stowell's (both New York) statistical analysis of the impact ICSID summary disposition rules on the duration of arbitral proceedings was posted to the ICSID website by Meg Kinnear, ICSID's Secretary General.

To read the full article, click here.

INTERNATIONAL ARBITRATION EXPERTS DISCUSS THE MOST SIGNIFICANT DEVELOPMENT IN 2019

23 December 2019: B. Ted Howes (New York) was interviewed about the most significant developments in international arbitration during 2019 and is quoted in this article from *Mealey's International Arbitration Report*.

To read the full article, click here.

ICCA CONGRESS SERIES

January 2020: Jawad Ahmad (London) wrote an article in the book "*Evolution and Adaptation: The Future of International Arbitration*", from the ICCA Congress Series No. 20, and published by Wolters Kluwer. The Article is entitled "*Date of Breach, Contributory Fault, and Mitigation of Damages in Investment Arbitration*" and is based on his presentation during the 2018 edition of the ICCA Congress held in Sydney, Australia.

To purchase the publication, click here.

ARBITRATING TRADE SECRET DISPUTES

20 January 2020: Jim Ferguson was interviewed by Financier Worldwide on "Arbitrating Trade Secret Disputes".

To read the article, click here.

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