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The Resolver



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News from the Chartered Institute of Arbitrators

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Anti-suit injunctions cast adrift

Rowan Planterose and Steven Friel

IN A LANDMARK DECISION, the European Court of Justice (ECJ) has ruled that it is inconsistent with EC Regulation 44/2001 (the successor of the Brussels Convention) for a court of a European Member State to make an order (commonly known as an anti-suit injunction) to restrain a party from commencing or continuing proceedings in another Member State on the grounds that such proceedings are in breach of an arbitration agreement.

Background

The case concerned the collision of a vessel owned by West Tankers and chartered to Erg Petrol SpA (Erg) with a jetty owned by Erg in Syracuse. The Charterparty between West Tankers and Erg was governed by English Law and provided for arbitration in London. Erg was insured by Allianz SpA, which paid the claim made by Erg and commenced proceedings against West Tankers before an Italian court, to recover the amounts they had paid out under the insurance policy.

West Tankers commenced proceedings in England seeking a declaration that, as the insurers were pursuing Erg's claim by virtue of the principle of subrogation, they were bound



Rowan Planterose, FCI Arb

by the arbitration clause in the Charterparty. They also sought an injunction to restrain the insurers from taking any further steps other than by way of arbitration including requiring them to discontinue the proceedings in Italy.

Anti-suit injunction

In March 2005 the English High Court granted the declaration and the injunction. Allianz appealed on the basis that the injunction was incompatible with Regulation 44/2001. The appeal was fast-tracked to the House of Lords (bypassing the Court of Appeal).

The House of Lords considered the issue important enough to be referred to the ECJ. In a speech made by Lord Hoffmann, the Lords made it clear that



Steven Friel, MCI Arb

in their view, Regulation 44/2001 was limited to court proceedings and did not apply to arbitration. Lord Hoffmann said that the purpose of an anti-suit application was to protect the contractual right to have the dispute determined by arbitration and that an arbitration agreement lay outside the system of allocation of court jurisdictions which the Regulation creates.

Decision

The ECJ disagreed with the House of Lords, and rejected the use of anti-suit injunctions in support of arbitration agreements, finding that they are incompatible with Regulation 44/2001. The rationale for the ECJ's ruling is that the courts of Member States must trust the courts of other

Member States to apply jurisdictional rules correctly.

The effect on London as an arbitration seat

Without the tool of an anti-suit injunction available to the English courts, it has been said that there may be an increase in the number of parties issuing proceedings, for tactical reasons, in other Member States in breach of English arbitration clauses. The question of jurisdiction will now have to be heard in that foreign Member State, which may not deal with the issue as swiftly as the English courts. It may also increase legal costs by requiring parties to instruct a second set of legal advisers abroad and by demanding the translation of court documents and correspondence.

The anti-suit injunction is viewed by many as a pragmatic solution to prevent disputes from being delayed in a foreign court where the contract clearly provided for arbitration in the UK. Without this tool, some are concerned that London may lose its edge over other international arbitration centres, such as Geneva, New York and Singapore.

Not everyone is so pessimistic. There are many other reasons why parties choose London as an arbitral seat, including the quality of lawyers and a

preference for English law. It may be advisable to query whether parties have anti-suit injunctions in mind when they enter into their contracts, and agree on the arbitration provisions.

Further, the implications of the ECJ's ruling apply only to arbitration within Member States, and so the anti-suit injunction will remain available against all of those countries that are not members of the European Union.

Rowan Planterose and Steven Friel are partners in the International Disputes Group at Davies Arnold Cooper LLP in London. ■

Tony Marks, CIArb's Director of Legal Services, agrees:

"The availability of the anti-suit injunction is only one of a number of factors to consider when choosing London as a venue for international arbitration.

"While it would obviously have been preferable if the European Court had decided that Courts of Member States were able to grant anti-suit injunctions, I tend to agree with the view of leading London law firms that the removal of this power will not, by itself, have an enormously detrimental impact on the choice of London as a seat for international arbitration."

Members save money with new CIArb Advantage

CIArb LAUNCHED ITS MEMBER benefits scheme, CIArb Advantage on 31 March, to help save members hundreds of pounds on products and services.

The collective buying power of the membership has been used to secure substantial savings relevant both at home and in the workplace, many of which are backed by a price promise. There are four main categories: business, lifestyle, insurance and advice. Included in the scheme are discounts on short breaks, car rental, eye care, health club membership, home and car insurance, legal helplines, mortgage advice, business dining and books.



Member
Benefits

**CIArb
Advantage**

Savings

Michael Forbes Smith, CIArb's Director General, explained: "With many of our members feeling the pinch in the global economic downturn, we wanted to help mitigate that by offering significant discounts on everyday products

and services. Members could save as much as the cost of their annual membership fee by using CIArb Advantage.

"The collective power of the membership is such that we can secure the benefits very cost-effectively. The launch is part of our ongoing drive to

improve membership services and make sure membership represents the very best value for money."

Access

All Members, Associates and Fellows of CIArb, as well as their partners and spouses, can take advantage of the scheme. It is also open to non-UK members, although at first most of the

benefits will be available only in the UK. However, if non-UK members have any suggestions to extend the scheme to include local suppliers, CIArb would be happy to consider any proposals.

Members can login to the dedicated CIArb Advantage website through the members' section of www.ciarb.org. There is also a dedicated telephone helpline **T: 0845 071 6397**. ■

Training courses starting June 2009

Find out more by visiting:

www.ciarb.org/education-and-training

FDI Moot heads for Frankfurt

THE FEBRUARY *RESOLVER* reported on the Inaugural FDI Moot which took place in Boston, US, in November 2008. Some 21 teams participated and several CI Arb members played key roles. It was won by Murdoch University in Australia.

The FDI Moot organisers are pleased to announce that the 2009 Moot will be held in Frankfurt, Germany on 23-25 October. It will be hosted by the Deutsche Institution für Schiedsgerichtsbarkeit (DIS) at the Frankfurt International Arbitration Centre. Teams from around the world are expected to participate.

2009 Problem

The 2009 problem is now available at www.fdimoot.org/problem.php and was developed in consultation with distinguished members of the FDI Moot Advisory Board. The problem examines, among other things, issues of investor nationality, investment definition and government compulsory licensing over intellectual property.

"Investor nationality is a recurring theme in investment arbitrations but remains interesting and even controversial, as recent decisions evidence," said Christian Campbell of the Center for International Legal Studies. His FDI Moot co-director, Prof Christopher Gibson of Suffolk University Law



Hew Dundas, FCI Arb

School, added: "We wanted to explore new issues this year, such as the importance of intellectual property in foreign direct investment and the potential overlap with international trade regulation."

Get involved

CI Arb members are warmly encouraged to participate in the FDI Moot, either by assessing the students' written submissions at home or in the office or better still, by attending in Frankfurt in October. Please contact Christian Campbell **E: christian.campbell@cils.net**. Alternatively, Hew Dundas will be happy to discuss this with you **E: dundas.energy@btinternet.com**. ■

Director-General's update

SINCE THE LAST EDITION of *The Resolver*, a number of important events have taken place, the results of which some of you will already have noted.

First, Neville Tait and I signed off the letters to the members of our Presidential Panels of Arbitrators, Mediators, and Adjudicators, inviting them to submit their CVs in electronic form as part of the introduction of the Panel Appointments Certificates Scheme (PACS). The Panels Management Group is now well on the way to completing the requirement in our 2005 Constitution to implement PACS. We hope that Panel members will not find the mechanics of submitting their CVs too onerous; do please contact Sandra Greenaway should there be any particular difficulties.

The "Learned Society" continues to develop, with four young interns from postgraduate degree courses in London, with nationalities from Ger-

man to North American, beginning their year with us in January. At the same time, we are looking forward to launching a scholarship programme, and are well down the road with our contribution to Lord Justice Jackson's *Review of Civil Costs*.

Particularly exciting for members generally is the new member benefits scheme. I know there has been lively interest in our PI Insurance offer, and I do hope that it will prove a useful and successful innovation for members. We do have other, if less professionally directed benefits, which include hotels, travel and health clubs.

My thanks to all those members who supported the ICC's Mediation Competition as judges and mediators. We hope we were able to see those of you who came to the Vienna Vis Moot in April, and I very much hope that we will be able to welcome more of you here to the Institute in Bloomsbury Square. ■

CI Arb members become QC

CI Arb CONGRATULATES seven members who were appointed to Queen's Counsel in March:

- Raquel Agnello QC, MCI Arb
- Judith Gill QC, FCI Arb
- Timothy Hill QC, MCI Arb
- Robert Lawson QC, MCI Arb
- Charles Manzoni QC, FCI Arb
- Peter Rees QC, FCI Arb
- Christopher Smith QC, MCI Arb

Peter Rees is a CI Arb Fellow, Chartered Arbitrator and Chairman of CI Arb's Board of Management, and one of three solicitor advocates to take silk this year. A partner in Debevoise & Plimpton LLP's European Litigation Practice, Peter has always conducted the

majority of advocacy in his arbitration cases. He works in Debevoise's International Dispute Resolution Group in London, and has represented clients in international arbitration cases heard in many different jurisdictions.

"The main factor the panel takes into account when making their decision on your suitability as a candidate is the quality of your oral and written advocacy, including advocacy in arbitration, as well as court," said Peter. "As the vast majority of my work is arbitration, I have no doubt that the advocacy that I have undertaken before arbitral tribunals has helped enormously in my appointment as QC."



Peter Rees QC, FCI Arb

"CI Arb Fellowship is probably the most widely recognised qualification in arbitration and other forms of private dispute resolution and is an assurance of quality for clients looking to engage counsel or neutrals in arbitration, mediation or adjudication." ■

Law reports

ARBITRATION

English Court grants order in support of Arbitral Tribunal's peremptory order

David Howell and James Rogers of Fullbright & Jaworski report on the decision in *John Foster Emmott v Michael Wilson & Partners [2009] EWHC 1 (Comm)*, which concerned an alleged breach of a partnership agreement. In this case, the arbitral tribunal issued a procedural order requiring MWP to procure that 27% of its shareholding in the Steppe shares were to be held to the order of the chairman of the tribunal. MWP did not comply with that order. Two further procedural orders were made requiring MWP to procure that the shares be held to the order of the tribunal. Again, MWP failed to comply with the orders. The tribunal therefore issued a peremptory order, requiring compliance by a specified date. When MWP again failed to comply, Mr. Emmott, with the permission of the tribunal, applied to the English Court pursuant to Section 42 Arbitration Act 1996 for an order requiring MWP to comply with the tribunal's peremptory order. Mr. Emmott also applied pursuant to Section 44 of the Act for a freezing order restraining the transfer of the shares. The court found that it was appropriate and in the interests of justice that it should support the tribunal's peremptory order. MWP was ordered to comply with the tribunal's peremptory order and a freezing injunction was also granted under Section 44 of the Act.

Full article available at:

www.fulbright.com

MEDIATION

The staying of legal proceedings when the parties have agreed to mediate

Alex Warrender of Brewer Consulting reports on the case of *Balfour Beatty Construction Northern Limited v Modus Corovest (Blackpool) Limited [2008] EWHC 3029 (TCC)*. The case concerned a construction contract, which incorporated the JCT Standard Form of Building Contract with Contractor Design (1998 edition) and a mediation provision. A dispute arose

and Balfour applied for summary judgment. The Counsel for Modus Corovest argued that this application should be stayed for mediation in accordance with the parties' agreement. The court decided that where the parties have agreed a particular method by which they wish their disputes to be resolved, it has inherent jurisdiction to stay proceedings brought in breach of that agreement. However, Coulson J gave two reasons why he was unable to grant a stay in this case. First, the mediation provision was nothing more than 'an agreement to agree' and therefore lacked certainty. Second, the judge said that even if there had been a binding agreement to mediate, he would only have granted a stay in circumstances where (a) the claimant was not entitled to summary judgment and (b) a reference to mediation was considered as the best way of resolving the dispute.

Full article available at:

www.brewerconsulting.co.uk

ADJUDICATION

Adjudication:

Grounds for resisting enforcement

Caroline Cummins and Liam Hart of CMS Cameron McKenna report on the decision in *Bovis Lend Lease vs Trustees of the London Clinic [2009] EWHC 64 (TCC)*; which provides guidance as to the basis for resisting enforcement of an adjudicator's decision on the grounds of breach of the rules of natural justice. In this case, the claimant contractor made an application for summary judgment for enforcement of an adjudicator's decision. The defendant argued, among other things, that the volume of new evidence served by the claimant in relation to a new claim in the adjudication was such that the defendant did not have a fair or effective opportunity to respond. The court rejected the defendant's argument on the grounds that the fact that a dispute is complex or involves considering a large volume of documents will not necessarily mean that an adjudication is procedurally unfair. It was decided that it is open to an adjudicator to decline the appointment or to withdraw if he believes that justice cannot be done

within the adjudication timetable. Further, it was stated that if a party fails to complain about a breach of natural justice during the course of the adjudication, but then makes such assertions in defence of enforcement proceedings, the failure to complain will be persuasive evidence that there has been no breach.

Full article available at:

www.law-now.com

Adjudicators' payment rights bolstered

Ruper Choat of CMS Cameron McKenna reports on the case of *Christopher Linnett v Halliwells LLP [2009] EWHC 319 (TCC)*. This decision minimises the scope for a responding party to avoid liability for an adjudicator's charges even when he lacks jurisdiction. In this case, the adjudicator was not a party to the contract between the referring party and the defendant. Nor did that contract confer on the adjudicator a right to recover his charges under the Contracts (Rights of Third Parties) Act 1999; the incorporated JCT 1998 form provided that nothing in it conferred any right on a third party. The court decided that although there was no concluded appointment between the adjudicator and the respondent, Halliwells, a contract had been formed by conduct. After Halliwells disputed the adjudicator's jurisdiction it continued to participate in the adjudication by making submissions on the substance of the referred dispute, albeit while reserving its right to later challenge the enforceability of the adjudicator's decision. It was decided that a contract arose (under which Halliwells were liable to pay the adjudicator his reasonable charges) from their effectively requesting the adjudicator to make a decision on matters other than purely whether he had jurisdiction. Alternatively the adjudicator was entitled to be paid as a matter of restitution.

Full article available at:

www.law-now.com



ICC competition

"Manifest disregard of the law" – unsettled waters

By Ann Ryan Robertson

THE 2008 DECISION of *Hall Street Associates, L.L.C. v. Mattel, Inc.*, has challenged the continuing viability of the "manifest disregard" doctrine. At issue in *Hall Street* was whether parties could supplement by contract the FAA's statutory grounds for vacatur (an order of court whereby a previous order is set aside or annulled).

Background

Section 10 of the Federal Arbitration Act (FAA) lists four statutory bases for vacating, modifying or correcting an arbitration award when the vacatur action is brought under Act 9 of the U.S. Code § 10. These are:

- ◆ where the award was procured by fraud or corruption
- ◆ where there is evident partiality or corruption of an arbitrator
- ◆ where arbitrator misconduct results in a party's rights being prejudiced
- ◆ where the arbitrator exceeds his powers or executes them so imperfectly that a definite, final award was not made.

Pursuant to Section 208 of the FAA, Section 10 is applicable to international arbitration awards.

Non-statutory grounds

In addition to these statutory bases, over the course of time, the U.S. circuit courts have come to recognise "manifest disregard of the law" as a non-statutory ground for vacatur.

The genesis of this judicially constructed doctrine is the U.S. Supreme Court's remarks in *Wilko v. Swan*, that the "[p]ower to vacate an [arbitration] award is limited" and "the interpretation of law by arbitrators in contrast to

manifest disregard [of the law] are not subject, in the federal courts, to judicial review for errors in interpretation." *Wilko v. Swan*, 346 U.S. 427, 436-37 (1953).

Hall Street

The *Hall Street* Court held that parties cannot contractually agree to expand the grounds for vacatur. In addressing *Wilko* and its now legendary "manifest disregard" statement, the Court questioned whether it should be read as creating an independent ground for vacatur.

Viability

Since the *Hall Street* holding, five of the U.S. circuit courts have addressed the question of whether "manifest disregard of the law" remains a viable ground for vacatur of an arbitration award, with two holding that the doctrine has been eliminated and three finding that it survives.

The Fifth Circuit's decision in *Citigroup Global Markets Inc. v. Bacon* is the most recent. It held that "*Hall Street restricts the grounds for vacatur to those set forth in § 10 of the Federal Arbitration Act ... and consequently, manifest disregard of the law is no longer an independent ground for vacating arbitration awards under the FAA.*" The First Circuit has also held that *Hall Street* abolished manifest disregard of the law as a ground for vacatur.

Opposing views

Other courts have held that "manifest disregard" continues to survive. The Sixth Circuit, in an unpublished opinion, narrowly construed the holding of *Hall Street* to apply only to contractual expansions of the grounds for review.

The Second Circuit, in *Stolt-Nielsen SA v. AnimalFeeds Int'l Corp.*,



Ann Ryan Robertson, FCI Arb

recognised that *Hall Street's* holding was in direct conflict with the application of manifest disregard as a non-statutory ground for review. Rather than find that the doctrine had been eliminated, the Second Circuit recast "manifest disregard" as judicial gloss on the specific grounds for vacatur enumerated in Section 10 of the FAA. Similarly, the Ninth Circuit has concluded that *Hall Street* did not abolish "manifest disregard" because the law of that circuit defined manifest disregard as shorthand for § 10(a)(4).

Call for clarification

Given the divergence of opinion among the U.S. circuit courts regarding the continued vitality of the "manifest disregard" doctrine, the U.S. Supreme Court's oblique reference to the doctrine requires greater clarification from the Court. Until the U.S. Supreme Court provides it, the question of whether an arbitration award can be vacated for "manifest disregard" remains unsettled – with the answer being dependent upon the circuit in which the action is brought. ■

New Employment Act increases the need for workplace mediators



Tony Marks, Director of Legal Services at CI Arb

ON 6 APRIL 2009, important changes to the law relating to dispute resolution in the workplace in the UK came into force as part of the Employment Act 2008. The Act:

- ◆ repeals the existing statutory dispute resolution procedures and related provisions about procedural unfairness in dismissal cases;
- ◆ confers discretionary powers on employment tribunals to adjust awards by up to 25 per cent if parties have failed unreasonably to comply with a relevant Code of Practice;
- ◆ makes changes to the law relating to conciliation by Acas;
- ◆ amends tribunals' powers by which they may reach a determination without a hearing;
- ◆ allows tribunals to award compensation for financial loss in certain types of monetary claim.

Implications for dispute resolution

The purpose of the changes is to give employers and employees more flexibility to deal with workplace discipline and grievance issues in a way that suits them best, and at an earlier stage.

A key weapon in the armoury of change will be increasing the promotion and uptake of alternative dispute resolution techniques before a claim to a tribunal is made, or becomes necessary. Employers will be expected to implement and promote early dispute resolution through greater in-house mediation and the use of mediation provisions in contracts of employment.

Tony Marks, Director of Legal Services at CI Arb, commented: "*The UK Government has supported mediation for some years as an effective dispute resolution technique. These changes are further recognition of mediation as a mainstream dispute resolution mechanism.*"

Employment tribunals will also be able to take into account the employer's or employee's reasonableness of behaviour when making awards and cost orders. A revised statutory Acas Code of Practice will set out the principles of what an employer and employee should do to achieve a reasonable standard of behaviour. The tribunal will have discretion to adjust

awards up or down by up to 25 per cent in relation to either party. Not having in place or attempting effective alternative dispute resolution at an early stage could therefore cost employers.

As a result of the changes, CI Arb has already seen an increase in demand for in-house mediation training from employers.

Anita Phillips, CI Arb's Education & Training Manager, said: "*Over the last five months, we have seen a big increase in requests for in-house workplace mediation training. It is an area that is certainly growing, and the changes to employment law brought in on 6 April will only increase demand.*"

Background

The 2008 Employment Act repealed the existing mandatory "three-step" processes for disciplinary and dismissal procedures undertaken by an employer and for grievances raised by an employee. These statutory dispute resolution procedures, introduced by the Employment Act 2002 (Dispute Resolution) Regulations 2004 ('the Regulations'), have proved unpopular with employers since they were introduced in 2004.

Although they aimed to encourage employees and employers to resolve disputes in the workplace, with employment tribunals used only as a matter of last resort, the Gibbons Review of 2007 highlighted several problems with this system. These included the high administrative burden and the costs to employers and the non-financial costs to employees such as stress and damaged employment prospects. While the statutory dispute resolution procedures brought more clarity about the steps to follow in a dispute, they were not relevant to all dispute situations. The Gibbons Review also found that many settlements happened too long after the dispute first occurred and many of the cases that did reach a tribunal hearing were capable of being resolved beforehand between the parties, at lower cost.

If you would like to discuss workplace mediation training, please contact the Education & Training team.

T: +44 (0)20 7421 7439

E: education@ciarb.org

Scottish Arbitration bill introduced

JOHN CAMPBELL QC, President of CI Arb, welcomed the introduction to the Scottish Parliament of the Arbitration (Scotland) Bill 2009 in January.

The Bill, which has cross party support, was drafted by the Scottish Government in close consultation with CI Arb and other arbitration practitioners. It will make access to arbitration in Scotland much easier for individuals, small and medium sized firms and large businesses. It is also anticipated to improve the whole arbitration process. In parallel with the Bill, CI Arb is preparing a set of short form arbitration rules for small and medium sized businesses and consumers, offering significant potential for rapid, low cost dispute resolution in a binding form.

"*This Bill, when enacted, will see Scotland leading the way in dispute resolution - not just in the United Kingdom but across the world,*" said Mr Campbell. "*It will provide a simple, easy and cost effective process that could potentially save disputing parties and the taxpayer millions of pounds in costs as well as a great deal of court time.*"

"*The Bill will be of benefit to everyone, from consumers who are unhappy with a service provided by a tradesman to large businesses caught up in what otherwise might prove to be lengthy and expensive litigation. This is a landmark piece of legislation, one of the most important in the economic history of Scotland. I am delighted that the Government has found Parliamen-*



John Campbell QC, FCI Arb, CI Arb President

tary time to introduce such an important measure, and extremely pleased that it has attracted such strong cross party support." ■

Protecting foreign investors – How the global financial crisis may affect investor-state arbitration

By Joshua Fellenbaum
and Christopher Klein



Joshua Fellenbaum,
ACI Arb



Christopher Klein

THE RAPID DOWNTURN in the global economy could directly affect investor-state arbitration claims. The International Monetary Fund's ("IMF") October 2008 assessment – "World Economic Outlook Report" called this economic crisis "the most dangerous financial shock in mature financial markets since the 1930s."

In response, US and European authorities have pursued exceptional fiscal and monetary policies to ameliorate instability in the financial markets, including huge capital injections, amplified deposit insurance coverage, and interest rate adjustments. Despite these efforts, a number of US, European, and Icelandic banks have been closed, nationalised or merged with public support.

That direct host state intervention has prompted some initial accusations of discrimination against foreign investors, which could open the door for a spike in investor-state arbitration claims.

This article looks at the potential for foreign investors to bring such claims pursuant to relevant bilateral

investment treaties ("BITs").

Turmoil on the stock markets

Global financial markets plummeted into turmoil following the bankruptcy of Lehman Brothers in mid-September 2008. In the following days, the IMF reported that "market pressure drove the merger of another US investment bank (Merrill Lynch & Co) with a large commercial bank, and the effective acquisition by the Federal Reserve of the world's largest insurance company, AIG."

Protection schemes

To cope, some host states set forth government-supported initiatives protecting not only domestic banks, but also foreign subsidiaries. For example the Netherlands now insures new debt to Dutch banks, including foreign subsidiaries with significant operations in the Netherlands. On the other hand, there are a number of instances where host states have proposed or instituted measures that only protect domestic banks, therefore potentially violating non-discriminatory guarantees found in relevant BITs. For instance, the Irish government initially set forth legislation to guarantee only new and existing debt of Irish banks.

Using BITs to protect foreign investment

In some cases, host states' rescue packages have been highly protectionist and raise the potential for discrimination against foreign investors. Since BITs seek to protect against pre-

cisely such discriminatory treatment – and often provide dispute resolution through arbitration – foreign investors should consider them a possible source for bringing a claim.

■ The first step in seeking arbitral recourse at the International Centre for Settlement of Investment Disputes ("ICSID") is to verify that there indeed is an enforceable BIT between the alleged discriminating host state and the state in which the affected investors are nationals.

■ Next, it is imperative that that language of the relevant BIT is closely scrutinised, mainly because some BITs offer protections not found in others.

While parsing of the language of the appropriate BIT, attention should be focused on clauses that protect against discrimination, such as national treatment provisions. Most BITs contain some form of a national treatment clause – which essentially provides that a host state will treat the investments of investors from the other state no less favourably than its own nationals.

However, BITs may contain exceptions to national treatment for certain sectors and investors. Thus, a national treatment claim will more likely be successful if no applicable exception applies.

Because they provide an alternative pleading to national treatment, BIT provisions on "fair and equitable treatment" and provisions that prohibit "discriminatory measures" should be consulted as a basis for a claim.

Finally, foreign investors must recognise the defences that a host state may possess against such a claim, such as invoking the principal of "necessity" or exceptions based on national law.

Host state defences

When reacting to the financial crisis, host states would do well to heed the lessons from Argentina's most recent economic crisis and its palpable effect on investor-state arbitration.

For example, in *Metalpar SA and Buen Aire SA v The Republic of Argentina*, the tribunal determined that Argentina's steps did not violate the Chile-Argentina BIT, despite the fact that the investors had suffered unfair treatment by Argentina.

In *Continental Casualty Company v Argentina*, the tribunal relied on article XI of the US-Argentina BIT, which states that "[t]his Treaty shall not preclude the application by either Party of measures necessary for the maintenance of public order, the fulfilment of its obligations with respect to the maintenance or the restoration of international peace or security, or the protection of its own essential security interests."

The tribunal noted that "under Art. XI, such measures would lie outside the scope of the Treaty so that the party taking it would not be in breach of the relevant BIT provision" and that a "severe economic crisis may thus qualify under Art. XI as affecting an essential security interest." Similarly, in *LG&E v Argentina*, the tribunal held

that certain periods of the financial crises met the requirements under customary international law for a "state of necessity."

However, other tribunals reached different conclusions. In *CMS v Argentina* and *Sempra v Argentina*, they decided that certain aspects of the economic crisis did not meet the standards of the "necessity" defence under international customary law or under Art. XI. A similar result occurred in *Enron Corporation and Ponderosa Assets, LP v Argentine Republic*.

Conclusion

The current financial uncertainties are far from over. The IMF's October 2008 Economic Outlook Report forecast that "the advanced economies would be in or close to recession in the second half of 2008 and early 2009, and the anticipated recovery later in 2009 will be exceptionally gradual by past standards." Meanwhile, "growth in most emerging and developing economies would decelerate below trend." As a result, host states will likely pursue further protectionist measures that attempt to stymie the effects of the global economic crisis, potentially violating non-discriminatory guarantees found in the relevant BITs. The result may be an increase in investor-state arbitration claims. ■

Joshua Fellenbaum is a consultant at Clayton Utz in Sydney and Christopher Klein is MBA student at the IE Business School, Madrid.

Case Study 1: applying the process to Ireland

Ireland has set forth legislation that would give state guarantees on deposits at its largest banks, while failing to offer foreign banks operating within the country the same guarantees. This action arguably discriminates against foreign banks and their investors.

Concerns about competition prompted the European Commission to make some subsequent changes to those measures – including that they also protect a number of specified foreign banks. Although the amended measures provide protection for some banks, they may not cover all foreign banks, and therefore discriminatory claims may still potentially be brought under the relevant BIT.

A foreign investor may find potential redress for Ireland's actions if it is a national of the Czech Republic, which is the only country to have entered into a BIT with Ireland. Article 3.1 of the Czech Republic-Ireland BIT provides for national treatment stating: "[e]ach Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party treatment which is fair and equitable and not less favourable than that which it accords investments and returns in of its own investors." Unlike some BITs from other nations, such as the US, no exception to national treatment is provided for the Irish banking industry.

Furthermore, a foreign investor may find potential redress in article 2.1, which states "[e]ach Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations" (emphasis added). Arguably, by only insuring its domestic banks' deposits and only a number of foreign banks, Ireland does not create favourable conditions for foreign investors.



Case Study 2: applying the process to the US



Following recent adjustments, the US's \$700 billion bail-out package will now be used to inject credit into floundering banks, which means that the US government will buy shares in US financial institutions, rather than buying toxic assets. However, even if those injections go only to domestic banks, foreign subsidiaries would most likely not have a claim of national treatment violation or other forms of discrimination under a US BIT. This is because, although many of the US's BITs provide for national treatment, these BITs provide a list of exceptions to the scope of such treatment. For example, both annexes of the respective US-Bahrain and US-Bolivia BITs assert that the US may "adopt or maintain exceptions" to national treatment obligations in various sectors, which includes banking and securities.

Case Study 3: applying the process to Iceland



The economic crisis has led Iceland to nationalise three of its largest banks and to propose a number of other potentially discriminatory measures. Landsbanki, one of Iceland's most prominent banks, owned Icesave, an online savings service with more than 300,000 depositors in the United Kingdom. When Landsbanki was nationalised in October, UK chancellor Alistair Darling reported that Iceland had "no intention of paying UK savers' money back." The UK does not have a BIT with Iceland, but other treaties and international courts may be used to arbitrate or litigate a potential UK claim.

UK investors may have no direct BIT with Iceland to rely on, but Iceland has signed BITs with seven other nations. Of those, six have come into force:

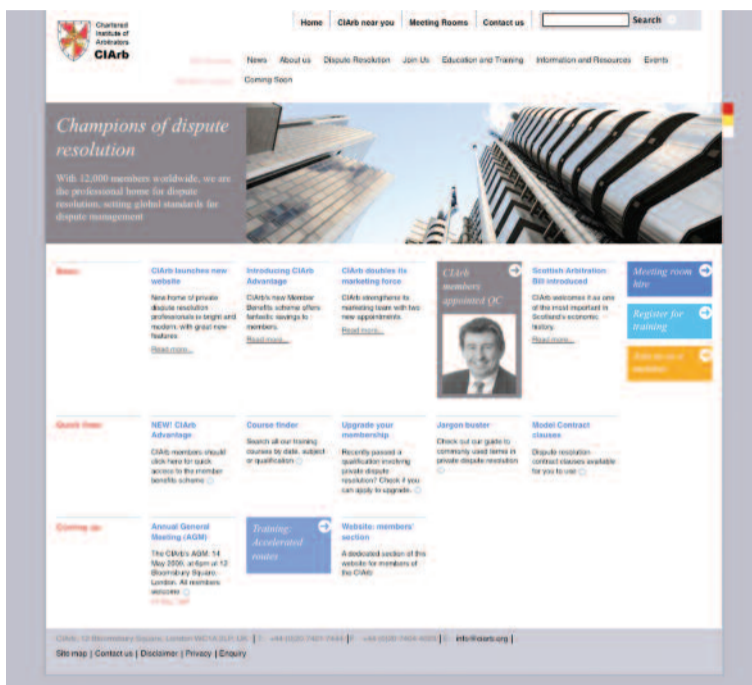
- ◆ Chile
- ◆ China
- ◆ Latvia
- ◆ Lithuania
- ◆ Mexico and
- ◆ Vietnam.



Therefore, an investor from one of these countries should consult the language of the relevant BIT for possible nondiscrimination protection against Iceland.

CIArb launches new website

CIArb unveils its new-look website
www.ciarb.org



BRIGHT, MODERN and easy-to-use, the website contains several new features which will help visitors find information more quickly.

Members and other users can find authoritative information on non-court dispute resolution, including news, training information and useful resources such as model contract clauses.

Centre of excellence

Nicki Alvey, Director of Membership and Marketing at CIArb, said: "We wanted a website which reflects our reputation as the professional home for dispute resolvers and a global standard-bearer for education in non-court dispute resolution. The new website is modern, outward-looking and professional, reflecting CIArb itself."

"We have also added new features

such as industry news, a global events calendar and CIArb Advantage, which will bring new benefits to our members."

Three-step launch

As we go to press, the public site has just been launched. The second phase will introduce a dedicated members' section and the third phase will bring a global events calendar and individual branch websites.

Feedback

The initial reaction from members has been very positive, describing the new website as "user-friendly", "modern" and "efficient". We have listened to your suggestions and will continue to improve the website to make sure it meets your needs. Please send your suggestions to Kathryn Grant

E: kgrant@ciarb.org.

IDRS holds first training day

THE WORD "STIMULATING" was often used to describe the first in a new kind of training day for arbitrators, adjudicators and mediators held in March by IDRS Ltd at CIArb in London.

IDRS (a company wholly owned by the Chartered Institute of Arbitrators) operates more than 100 arbitration, adjudication and mediation schemes. The training day was for members of IDRS' panels.

The purpose of the training day was partly to provide the CPD which is an essential part of maintaining panel membership. But it was also the first time that a joint CPD day had been held which gave arbitrators, adjudicators, mediators and conciliators from the main IDRS panels the opportunity to meet each other, the panel convenors and the IDRS management team.

David Sharp, an adjudicator on the CISAS Panel said, "It was interesting, lively and a good chance to meet the wider teams." Anthony Connerty, a member of the Funeral Arbitration Scheme as well as an international mediator and arbitrator commented, "I very much enjoyed it".

Guidance on the effects of human rights on hearings and fairness



From left to right: Ros Gardner, Independent Reviewer of IDRS Ltd, Allan Connarty, ACI Arb, IDRS Ltd Managing Director and Mair Coombes Davies, FCI Arb – Chairman IDRS Committee of Panel Convenors.

requirements together with problems that adjudicators have run into when holding hearings was given by Jane Irvine, the convenor of the Arbitration Scheme for the Travel Industry, and Stephen Bate, a CISAS Panel adjudicator. Other topics included a consumer law update by the Office of Fair Trading and effective communication by using plain English in awards and decision writing by Neville Tait. David Sharp gave an insightful talk about

electronic data information security technology and e-disclosure. The day was finished by a 'War Stories' forum with Mair Coombes Davies, Chairman of IDRS Committee of Panel Convenors, and a 'heads up analysis' of panel business by IDRS managing director, Allan Connarty.

Neville Tait, the convenor of the National House-Building Council Panel, summarised everything very simply: "an excellent day all round".

A guide to PACS

By Mair Coombes Davis

CIARB HAS LONG AIMED to be, in all corners of the world, the premier organisation for the education and fostering of the talented people who aspire to be dispute resolvers. 'The Guidance. Edition1. 2009' explains what you need to know to be considered for appointment as an arbitrator, adjudicator or mediator by CIArb. It applies worldwide and covers all CIArb branch regions, from Australia to Zimbabwe. The Guidance takes us into the 21st century. It should be welcomed by the entire membership, and the industries whose disputes we try to help resolve.

Panel systems

Many branches operate or aspire to operate appointment or panel systems which are unique to them. CIArb centrally operates three panels of accredited arbitrators, adjudicators and mediators. IDRS Ltd (a company limited by shares and wholly owned by the Institute) administers CIArb's presidential appointments from these three panels.

PMG

CIArb's Panels Management Group (PMG) has responsibility to maintain CIArb's central lists and panels of experienced practitioners to ensure the maintenance of high standards.

Crucially, the PMG also has the

remit to provide for the establishment and administration of a Panel Appointment Certificate Scheme (PACS) and of Peer Review Panels. The purpose of PACS is to enable members of the Institute to demonstrate by holding a Panel Appointment Certificate that:

- ♦ They are suitable and competent for consideration for appointment.
- ♦ They wish to be considered for appointment.

How it will work

You must apply to the PMG for a Panel Appointment Certificate. At the start of the PACS Scheme in 2009, upon application, existing practitioners shall be granted an initial Panel Appointment Certificate for 4 to 5 years.

Upon acceptance to a CIArb main panel, newly qualified chartered arbitrators, accredited adjudicators and accredited mediators will be granted an initial Panel Appointment Certificate for 3 years from the date of qualification.

Upon expiry of a Panel Appointment Certificate, its renewal for up to 5 years shall be conditional on the satisfactory completion by the member of an assessment by a Peer Review Panel.

Transparency

The Peer Review Panels and the Panel Appointment Certificate have been built to be transparent. With this in mind, 'The Guidance. Edition1. 2009' sets out procedures and a code of eth-

ical practice for selecting suitably qualified practitioners from each region for the Peer Review Panel and for holding a Panel Appointment Certificate.

The need for certification

These changes introduce into the life of the Institute a level of regulation which many will find unfamiliar. There will be some who say it is unnecessary. However, in this day and age it is necessary not only to act transparently, but to be seen to have a system of accreditation and certification which is fair, visible to the public, and which brings a measure of guarantee extending beyond mere personal reputation. In other words, we have to be able to measure up to an acceptable standard if we wish to avoid government interference and regulation. Such has been the growth in our business, and the range of areas where we operate, that we can no longer rely on the assurances which may come only from experience and knowledge of the subject. Those are still necessary, but we need to go further.

'The Guidance. Edition1. 2009', is divided into thirteen parts, covering Ethics, Procedure, the Panel Appointment Certificate Scheme, Peer Review and Interview Panels for Arbitrators, Adjudicators and Mediators, the PMG itself, application forms, interviews for Chartered Arbitrator status, the Construction Industry Adjudicator Panel, and the Panel of Experienced Commercial Mediators.

It can be read in full at www.ciarb.org.

Get Professional Indemnity (PI) insurance through CIArb

FOLLOWING THE RESPONSE from members, we are pleased to launch CIArb's Professional Indemnity insurance scheme.

Members of CIArb – whether arbitrators, mediators or adjudicators – can access preferential rates of insurance cover from premium rates as low as £250 (plus local tax as applicable).

Key benefits of the scheme include:

- ♦ cover for work undertaken anywhere in the world
- ♦ no limit to the number of claims made in the policy year
- ♦ low excesses
- ♦ limit is for any one claim.



If you wish to obtain a quote, please email ciarb@lothburyuk.com and state your name, CIArb membership number, country of residence, annual fees (local currency and approximate Sterling equivalent) and limit of cover required: £250,000, £500,000, £1m or other as specified.



UK: Scottish Branch



Northern Chapter off to a flying start in Scotland

THE SCOTTISH BRANCH of CIARB, chaired by Len Bunton, has set up a chapter based in Aberdeen to provide a more responsive service to members.

The inaugural meeting was held on 26 February 2009 at the Aberdeen Business School of The Robert Gordon University. It was preceded by the first interim committee meeting chaired by Derek Auchie, Chair of the interim committee and Brandon Nolan, Vice Chair of the Scottish Branch.

The interim committee will be consulting members in the North East of Scotland and Highlands about the

make up of the committee and the programme of events.

Peter Aeberli addressed the inaugural event and gave a stimulating talk on the purpose of alternative dispute resolution compared with litigation. He suggested that a key indicator is the number of disputing parties who elect to use and pay for ADR.

Around 36 people attended from the construction sector and other industries.

The Chapter intends to run a CIARB entry course in May in Aberdeen, and a series of events:

- ◆ **April:** Dispute Resolution in the Oil & Gas Industries
- ◆ **June:** Implications of the new Arbitration (Scotland) Bill
- ◆ **September:** Commercial Property leases - Rent Review Dispute Resolution.

They will start at 5.30pm for 6.00pm, last an hour and have time for networking until 7.30pm. Further details can be obtained from Derek Auchie **E: d.p.auchie@rgu.ac.uk** or Rachael Brown, Administrative Secretary, **E: rachael.brown@brodies.co.uk**. ■



(From left to right) Back row: Bob Shorter, Derek Auchie, MCIARB, Chair interim chapter committee, Richard Noble, MCIARB, Jonathan Nesbitt, FCIARB, Keith Adams, FCIARB, Doug Fiddes, FCIARB, Chris Arnold, FCIARB
Front row: Brandon Nolan, MCIARB, Vice Chair Scottish Branch, Hazel Barclay, Len Bunton, FCIARB, Chair Scottish Branch

East Asia



Thailand Branch enjoys social evening



(From left to right), Thailand Branch Chairman, Mr Jayavadh Bunnag, FCIARB, speaker Dr Apirath Prateapusanond and Pratim Ghose, MCIARB, Events Manager.

CIARB's THAILAND BRANCH enjoyed its quarterly committee meeting, social evening and after-supper talk on 25 February at the RBSC Polo Club.

The evening speaker was CIARB Committee Member Dr Apirath Prateapusanond, engineer, construction dispute consultant and delay expert. She gave an after-supper talk about the US's view on the use of critical path method (CPM) schedules in proving delay claims in dispute resolution.

Dr Prateapusanond explained

how parties may seek compensation by submitting a claim when delays to a project completion date cause increased costs and other damages. Use of Critical Path Method Scheduling can help identify the period of the delay, determine its cause and effect, and pinpoint the responsible parties. Whether such delays are to non-critical activities, which do not change the project completion date, or to critical activities, which do affect completion, they are easily identified by using CPM Schedules.

Dr Prateapusanond has more than 10 years of experience in the analysis of construction delay, inefficiency, acceleration, change order, and defective design claims in the United States. Her project experience includes many mega construction projects, such as Big Dig underground expressway project in Boston, Power Plant in Puerto Rico, Ronald Reagan Federal Triangle Building Project in Washington DC and Dubai Mall in UAE. ■

UK: Western Counties Branch



Western Counties Branch builds for the future

THE WESTERN COUNTIES Branch of CIARB has launched an initiative to attract new young members.

It has teamed up with Contract Construction Consultants, GF Partnership and *Building* magazine, to launch the Bristol Phase One networking club. This is a unique opportunity for new professionals in construction, engineering, architecture and surveying to broaden their contacts and their industry knowledge.

With regular events in cities across the UK, Phase One offers young members the chance to meet other young professionals across all disciplines in an informal setting, as well as exclusive access to new buildings and distinguished industry speakers.

Forthcoming Phase One events in 2009:

- ◆ 7 May, Birmingham
- ◆ 9 July London
- ◆ 10 September Manchester
- ◆ November Dubai
- ◆ 3 December London

Phase One is free to attend, but places are limited. To receive information on upcoming events and to reserve your place, visit: **www.building.co.uk**.

For partnership opportunities, please contact Katie Ogle **E: katie.ogle@ubm.com T: +44 (0)20 7560 4229**. For any other questions please contact **E: katie.chinnock@ubm.com** ■

Kenya Branch



MBS honour for Kenya Branch member

Chartered arbitrator and past Chairman of the Kenya CIARB Branch, Faruq Khan, has been awarded the Moran of the Order of the Burning Spear (MBS). The prestigious honour recognises his contribution towards the development of the engineering and arbitration professions in Kenya and his service towards CIARB.

Faruq, who until recently was the Managing Director of Abdul Mullick Associates, was honoured by His Excellency President Mwai Kibaki at a recent ceremony, following The President's announcement of the award on Jamhuri Day, 2008.

He was nominated for his award by the Kenya Branch of CIARB. This is the first time such an award has been granted to a member on the recommendation of the Branch.

Faruq's citation was read at the



Sam Mwale confers the MBS onto Faruq Khan, FCIARB.

ceremony by QS Adam Marjan, Branch Chairman, who praised his achievements in training arbitrators and ADR practitioners both in Kenya, West and Southern Africa and overseas. He said that the honour reflected not only Faruq's contribution but also that of CIARB, which had made its presence felt all over the African continent and beyond.

Faruq was presented with the Order alongside eight other recipients.

The ceremony was presided over by Sam Mwale (CBS) Principal Administrative Secretary of the Office of the President, who made the presentations on behalf of the President.

The event was hosted by the Association of Professional Societies in East Africa (APSEA) at the Stanley Hotel, Nairobi. The Chairman of APSEA in his confirmation of the honour noted that Faruq Khan had earned the award in recognition of the outstanding and distinguished services rendered to the nation of Kenya, which went well beyond the call of duty.

Faruq Khan is a Registered Consulting Engineer and a Member of the Institution of Engineers of Kenya. He is currently based in Mississauga, Canada where he continues to be involved in matters of construction, arbitration and ADR. ■

The Americas



North America launches Southeastern Chapter

The North American Branch of CIARB has announced the formation of a Southeastern Chapter. The new chapter will include existing members in Alabama, the Carolinas, Florida, Georgia, Mississippi, and Tennessee and will promote membership growth through training and networking events throughout the Southeastern United States.

Philip "Whit" Engle, the President of the new chapter said: "We are delighted to bring the resources and

opportunities of the Chartered Institute's global network to the Southeastern United States as one of the fastest growing and most economically diverse regions in the world. We welcome any interest in the work of the Southeastern Chapter and will circulate information about some exciting events as they are planned."

For further information please contact Philip W. "Whit" Engle **E: pengle@prenova.com**. ■

UK: London Branch



Branch addresses property market

THE LONDON BRANCH of CIARB held a seminar on problems in property arbitrations at Lovells on 16 February. It was well attended and included talks by Nicholas Cheffings of Lovells Solicitors, Geoffrey Wright of E.A. Shaw Chartered Surveyors and London branch Chairman Stephen

Bickford-Smith.

A lively debate took place particularly concerning expert reports in a market afflicted by a dearth of comparable transactions. The Branch is very grateful to Nicholas Cheffings and Lovells for their generosity in hosting the seminar. ■

Bhurji, bricks & brothers – a day in the life of a mediator

By Harvinder Singh Bhurji,
Commercial Mediator

SLIPPING INTO FIFTH GEAR, and shifting 70 mph, I headed towards Leamington Spa, wondering what today's mediation would bring. It played on my mind for a while, until I fell into my regular daydream of becoming a rich celebrity mediator.

I arrived and was greeted by an efficient receptionist who showed me the rooms that had been allocated. The case concerned an alleged breach of contract arising out of a house extension that had not been completed by the defendant building company, as per the contract that had been entered into.

Brothers at odds

The claim was for £94,000. The problem was that the claimant and the defendant were brothers. The opening joint session consisted of hostility coupled with mumbling in Punjabi which I would not care to translate. This was not going to be one of my smoother mediations.

Several points were made. Counter arguments, questions and further arguments followed. Twice I had to stop the parties and their representatives for interrupting the other and making comments which were not assisting the process.

Ensuring we had foundations to build on and reaffirming the purpose of today, I made it clear that any more outbursts may lead me to terminate the mediation. We had order once more; a good time to start the private sessions.

Claimant

The first private session was held with the claimant, his wife, mother and solicitor. The key contention was that the defendant had foisted his services upon them. They were ready to employ a reputable builder, before the defendant offered his services cheaper, with the added guarantee of, "Trust me; I'm not an outsider I'm your older brother."

The interesting thing with Asian families is the hold that we have over one another, the ethos of Izzart (respect) for ones elders. Protocol dictates that you should not question your elders, even though they may be inherently wrong. This is why the claimant did not raise as many issues with the defendant on site as he would have done had they not been related.

Old grudges

Things had gone seriously wrong. Other family members had become involved, sides had been taken and old grudges and debts had resurfaced. "He still owes me 80,000 Rs (£1,000) from 1962 when he came over from the Punjab," shouted the defendant in our first private session.



Harvinder Singh Bhurji, MCI Arb

Negotiations

Lunch came and went, several private sessions later we appeared to be making head way and both parties cautiously started to negotiate, under the guidance of their representatives. The defendant made it clear he admitted no liability or foul play but wanted an easy life, and wanted the family members by whom he had been ostracised to know he had not ripped off his younger brother.

Closer and closer to settlement, loose bricks being cemented on the way, I suggested, as I do in most of my mediations now, that issues of key importance be relayed by the parties face to face, rather than through me.

We met jointly and mother interrupted and delivered a powerful yet

moving speech in Punjabi which I allowed, and translated for their legal counterparts.

"Your father was a good hard working man, who raised you both better than this. He would be ashamed to call you his sons if he were alive and saw you fighting over money," she said. It clearly struck a very deep nerve in both brothers.

Deal

An hour later we struck a deal. The remedial work, according to the receipts and invoices supplied, totalled an extra £34,000 more than the original contract price of £65,000, of which the defendant reluctantly agreed to pay £20,000.

Whilst the solicitors drafted the mediation agreement, I asked the parties whether they wanted to resume

their relationship. Unfortunately they declined. However they did want to smooth over the problems that they had experienced with other family members and friends.

7.45pm, jetting back down the M40, I couldn't help but think how I could have got them talking again and taken the commercial element out of this. It was indeed a family dispute, where two brothers had become so bitter they were unable to stand the other.

What else could I have done? As mediators we are there to facilitate and assist parties to negotiate settlements, not to impose solutions upon them. I can only hope that my intervention has possibly built a way forward for a future relationship to evolve. Hopefully not another contractual relationship though. ■

Something to say?

SHOULD YOU WISH to comment on an item published in The Resolver, or if you would like to express an opinion or point of view of a more general nature, you are invited to write a letter to the Editor.

Letters should be addressed to:

Editor of The Resolver

The Chartered Institute of Arbitrators,
International Centre for Arbitration
and Mediation,

12 Bloomsbury Square,
London, WC1A 2LP, UK

Alternatively, letters may be sent by email to: resolver@ciarb.org

When writing, please include your full name and membership number (anonymous letters will not be published). Letters will be published at the Editor's discretion and no correspondence will be entered into. ■

Welcome

AS CIARB CONTINUES TO GROW, it is delighted to welcome the following individuals who have joined its ranks in the first quarter of 2009. ■

Australia

Mr MJ Bennett
Ms SJG Dow
Mr R Manly
Miss S Razi
Ms J Soars
Mr JA Witt
Miss MR Yeo
Mr A Zahar
Bahamas
Justice RM Nottage
Bahrain
Ms C Metcalf
Mr LA Smith
Mrs R Vijayaraghavan

Canada

Mr R Foerster
Mr M Laurin
Mrs ME Moore
Mr J Oakley
Mr CG Paliare
Egypt
Eng G Al Maayery
France
Mr C Bouckaert
Mr GHA Wallbank
Ms E Wong
Germany
Ms A Balzer
Mr P Hachem

Ghana

Mr KA Boateng
Mr CW Zwennes

Gibraltar

Mr LMP DeVincenzi
Mr BRE Penney

Greece

Mr S Antonelos
Mr G Gravias

Hong Kong

Mr CYS Chan
Professor KIP Chan

Mr YHN Cheng
Ms WSA Cheung
Mr KMW Chui
Mr RF Fellows
Mr RD Hill
Mr C Kong
Mr HB Lai
Mr CH Lam
Mr SKA Lam
Mr SJ Latham
Mr TH Lee
Ir K Mak
Mr SD Mau
Mr JM McLaren -
Pearson
Mr SL Ng
Mr RJS Thomson
Ms EA Wilson
Mr WK Wong

India

Mr B Balakrishnan
Mrs M Ganesh
Mr A Maji
Mr DC Maletira
Mr P Sancheti
Mr Z Veselinovic
Indonesia
Mr L Van Dijk
Ireland
Ms C Byrne
Ms AO De Bruir
Mr C McCormick
Mr R O'Briain
Mr R O'Tuairisg
Ms C Tierney
Mr J Treacy

Italy

Prof I Castellucci
Jamaica
Mr DG Wilson
Japan
Mr EJ Maddison

Kenya

Ms MA Abonyo
Mr ZO Achoki
Mr JM Cleave
Mr SM Ikingi
Mr MM Itote
Mr A Karim
Mr JN Macharia
Mr JN Mbogo
Mr M Mbugua
Ms EK Muli
Mr EK Mutea
Mr NK Mutuma
Miss L Mwangi
Mr GA Namulanda
Mr CM Ngugi
Mr SN Ngugi
Eng TO Ogalo
Mr GN Omoke
Ms J Oyuyo
Mr SM Rukwaro
Ms PM Tutui
Mr HO Wanyundi
Mr JJ Weloba

Lithuania

Mr M Ajauskas

Macau

Mr CH Chan

Malawi

Mr HJK Chiudzu

Malaysia

Mr JSK Chong
Miss WK Lee
Mr PH Tan

Mauritius

Mrs U Boolell
Mr I Sivaramen

Namibia

Mr FPO Muketi

Netherlands

Ms JO Adyel

Jordan

Mr M Kingsley-Nyinah

Nigeria

Miss O Adebajo-Olowa
Mr OA Adeniran
Mr IA Ajao
Mrs FO Ajayi
Mrs CO Akande
Mr TB Akeremale
Mr AO Akintoye
Mr RA Akintunde
Mr CV Akpa
Dr VO Akpotaire
Miss OO Amore
Mrs NE Anyaonu
Mr OI Arasi
Mr AO Arowolo
Mr U Chikelue
Miss O Chinelo
Mrs SH Daniel
Mr MO Dawodu
Miss HB Dimka
Mrs NJ Edeoghon
Mrs CU Eke
Mr C Eke
Mr GOA Ekiola
Mr SJ Ekpo
Miss IJ Elueche
Mr OS Emelieze
Mr E Enenche
Miss OF Falade
Mrs F Falana
Mr OP Famakin-Johnson
Ms OB Foy-Yamah
Mr AD George
Mr BI Ibeke
Mrs C Ibeke
Mr CK Iloeje
Reverend ST Kalama
Mr BN Kumbé
Mrs AA Kuyoro

Pakistan

Miss Z Ali

Qatar

Mr TA Elhag

Romania

Ms O Dumitrescu

Singapore

Mr L Popa

Sri Lanka

Mr W Jayaweera

Syria

Mr B Alawany

Turkey

Mr JW Blythe

United Arab Emirates

Mr P Abeywickrema
Mr F Ahmad
Mr C Alexander
Mr D Ball
Mr PM Bourner
Mr SJ Chennakkattu
Mr MD Cherkaoui
Mr ULA Fernando
Mr MA Forse
Mr GTG Freear
Mr A Fuad
Mr KR Hettiarachchi
Mr I Khalid
Mr RJ Lloyd
Mr AJ Manji
Mr B Mathivannan
Mr MAR Metwaly

United Kingdom

Mr N Ahmed
Mr DJ Allen
Mr TO Balogun
Mr SP Beaumont
Ms S Beckwith
Ms EO Bolashodun
Mr J Bourke
Mr P Bourke
Mr A Budworth
Ms F Campbell
Mr E Carolan
Mr FP Cassidy
Mr PD Chatham
Mr J Cheema
Mr G Clair
Miss LMH Clarke
Mr MJ Collett
Mr S Cullen
Mrs J D'Agostino
Mr M Dando
Mr GA Davner
Mr TH Deane

USA

Mr AM Appel
Mrs BT Dagar
Mr NT Daniels
Mr DT Hunter
Mr J Keller
Mr E Lesser
Mr T Moritz
Mr FP Phillips
Mr WL Rosoff
Mr P Rundle

Zambia

Mr PC Malambo
Mr CM Mapipo
Mr P McSporren
Ms MC Mumba
Mr SP Ng'ambi
Ms S Rattray
Mr C Tembo
Ms MW Vokovic
Miss KM Walubita

Pakistan

Miss Z Ali

Qatar

Mr TA Elhag

Romania

Ms O Dumitrescu

Singapore

Mr L Popa

Sri Lanka

Mr W Jayaweera

Syria

Mr B Alawany

Turkey

Mr JW Blythe

United Arab Emirates

Mr P Abeywickrema
Mr F Ahmad
Mr C Alexander
Mr D Ball
Mr PM Bourner
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Ms F Campbell
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CI Arb professional training diary – June – October 2009

Courses (except Diploma) to be held at CI Arb, 12 Bloomsbury Square, London

Commercial Dispute Resolution		
Introduction to Commercial Dispute Resolution	14 September	£949 + VAT
International Arbitration		
Introduction to International Arbitration	4 June	£549 + VAT
Introduction to International Arbitration	11 September	£549 + VAT
Module 1 Law of Obligations and Civil Evidence	12 October	£1,549 + VAT
Module 4 International Arbitration – Award Writing	21 September	£1,299 + VAT
Diploma in International Commercial Arbitration	12-20 September	£4,884 + VAT
Adjudication		
Introduction to Adjudication	9 June	£549 + VAT
Introduction to Adjudication	17 September	£549 + VAT
Module 1 Law of Obligations and Civil Evidence	12 October	£1,549 + VAT
Module 2 – Law of Adjudication	12 October	£1,549 + VAT
Accelerated Route to Fellowship (Adjudication)	14-16 September	£2,299 + VAT
Arbitration		
Introduction to Arbitration	1 June	£549 + VAT
Introduction to Arbitration	8 September	£549 + VAT
Module 1 Law of Obligations and Civil Evidence	12 October	£1,549 + VAT
Module 2 Arbitration – Law of Arbitration	12 October	£1,549 + VAT
Module 3 Arbitration – Practice, Procedure, Drafting & Deciding	12 October	£2,299 + VAT
Module 4 Arbitration – Award Writing	21 September	£1,299 + VAT
Peer Interview – Arbitration	9 July	£249 + VAT
Mediation		
Introduction to Commercial Mediation	12 June	£549 + VAT
Introduction to Commercial Mediation	15 September	£549 + VAT
Module 1 Mediation – Commercial Mediation Training	2-4 June and 9-10 June	£2,595 + VAT
Module 2 Mediation – Commercial Mediation Accreditation Assessment	16-17 June	£1,295 + VAT

For further information about the CI Arb Pathways programme, please visit www.ciarb.org

If you have any questions or wish to book a course or workshop: **T: +44 (0)20 7421 7439** or **E: education@ciarb.org**

International Commercial Arbitration Diploma

FOLLOWING EXCELLENT feedback from last year's course, CI Arb is pleased to announce that its Diploma in International Commercial Arbitration course will run from 12 to 20 September at Keble College, Oxford.

Launched in 1995, the course provides a thorough understanding of the practice and procedure of international commercial arbitration, and a platform to progress to CI Arb Fellowship.

The course attracts candidates across numerous countries, including Australia, Canada, England, France, Hong Kong, Ireland, Israel, Malaysia, New Zealand, Nigeria, Singapore, Scotland, Thailand and the USA.

It consists of nine days of lectures, tutorials and discussion workshops



Keble College, Oxford

dealing with international arbitration law, practice and procedure.

For further information and to

register, please contact the Education team **T: +44 (0) 20 7421 7439**

E: education@ciarb.org

CI Arb doubles its marketing force



Kathryn Grant and Carol Kerr

CI Arb IS PLEASED TO announce two new appointments to its marketing and communications team.

Kathryn Grant joins as the Institute's PR and Communications Executive, and Carol Kerr becomes Marketing Campaigns Executive. These are two new roles for CI Arb, which will help it fulfil its objective of promoting the use of non-court dispute resolution globally and expanding its membership.

Richard Rodger, Marketing and Communications Manager, said: "We are delighted to welcome Kathryn and Carol who, as part of the marketing team, will help to strengthen the reputation of CI Arb as a global centre of excellence for non-court dispute resolution."

One of Kathryn's key aims will be to increase the media exposure of CI Arb,

communicating the expert knowledge that exists across the organisation. She joins from the Environment Agency in Bristol, where she worked as Communications Officer for online environmental law service NetRegs.

Carol will be developing targeted campaigns to drive CI Arb membership internationally and increase participation in the CI Arb's Pathways training programme. Originally from South Africa, Carol has worked as Senior Marketing Executive with Reed Business Information and the Financial Services Authority in London. She is highly experienced in online marketing and campaign management.

Anyone wishing to find out more about the PR opportunities available to them through CI Arb should contact Kathryn on **T: +44 (0)20 7421 7473** or **E: kgrant@ciarb.org**.

Forthcoming UK Events:

- ◆ **14 May 2009:** CI Arb AGM, Bloomsbury Square, London, 6pm to 8pm
- ◆ **29 October 2009:** CI Arb Mediation Symposium, London
- ◆ **17 November 2009:** CI Arb London Branch Annual Dinner, London
- ◆ **Advance notice:** A Members' lunch is due to be organised for late June/early July in London.

Updates and notices:

Bahrain Branch seeks registration

Following the election of the interim Committee, the Chairman Yousef Zainal is working hard to arrange for the Bahrain Branch to be registered so that it can start to provide meetings, courses and social events for members and non-members. The Executive continue to work with the Minister of Justice to provide arbitration training in Arabic.

Caribbean Branch develops training

The Branch Chairman John Bassie is currently working with members in the Bahamas, Barbados and Trinidad to provide CI Arb training. The President, John Campbell, will be visiting the branch and further details will be sent nearer the time.

CONTACT INFORMATION

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