

**EDITORIAL**

Welcome to the first edition of volume 12 of *The Vindobona Journal of International Commercial Law and Arbitration*. We start by wishing the New York Convention a happy 50<sup>th</sup> birthday!

This edition includes the following:

- The doctrines of separability and competence-competence address issues concerning the jurisdiction of arbitral tribunals and aim to give international commercial arbitration maximum effectiveness. Where a party challenges an arbitral tribunal's jurisdiction, questions arise such as what is the tribunal's power to determine the challenge, is the challenge justiciable and whose decision is final? While the answers are invariably determined at a national level, what comity, if any, exists at an international level? *John Zadkovich* explores these questions and more in 'Divergence and Comity among the Doctrines of Separability and Competence-Competence'.
- Arbitration is the predominant model of dispute resolution in the United States securities industry. In 'Realities of Securities Arbitration in the USA Today', *Georgios Zekos* argues that, whilst United States courts have endorsed arbitration as an efficient and specialised model for the resolution of securities disputes, the reality is that securities arbitration is increasingly mimicking litigation. *Zekos* discusses the historical development, the role of self-regulatory bodies like the National Association of Securities Dealers in the conduct of securities arbitration, and the place of federal and state laws in the process.
- In 'Enforcement of Arbitral Awards: A Comparative Study of Egyptian Arbitration law and the U.S.A. Arbitration Act', *Fatma Youssef* provides a comparative analysis of the law governing the procedures for enforcing arbitral awards in Egypt and the United States. The enforceability of arbitral awards is pivotal to the effectiveness of international arbitration as a dispute resolution system and this article outlines the limitations and advantages of the law of each State. The similarities between both systems highlights the general acceptance of international arbitration as an alternative dispute resolution system and a willingness to give meaningful effect to arbitral awards.
- *Sizwe Snail* reviews alternative dispute resolution procedures for domain name disputes in South Africa under the regulations introduced in late 2006. The author first examines the grounds upon which a registered domain name may be challenged (i.e. abusive and offensive domains). *Snail* then describes the procedures available to aggrieved parties, and concludes by outlining the remedies available to a party that is dissatisfied with the outcome of the dispute.
- *Roberto Bergami* provides a commentary on aspects of international trade that are core to every transaction: classification, origin and valuation of goods for Customs

purposes, so as to arrive at the correct duty payment for imported consignments. *Bergami* points out that these are complex matters involving a great deal of detail and analysis that the novice would find difficult, if not impossible to meet single-handedly. Traders have an obligation to declare the correct information to the satisfaction of Customs to ensure success. Using a risk management model as a framework, the author suggests a number of practical approaches that may be useful in avoiding costly mistakes.

- India is in the process of gradually integrating its markets with the global economy. This movement has resulted in the enactment of the new Arbitration and Conciliation Act 1996 based on the UNCITRAL Model Law. In ‘Enforceability of Foreign Arbitral Awards in India’, *Vinay Tyagi* and *Aishwarya Singh* examine the 1996 Act and its interpretation by the Indian Courts, in order to determine whether it protects the legitimate interests of parties when pursuing the enforcement of arbitral awards. This article looks at whether the 1996 Act has succeeded in curtailing judicial intervention that threatens to derail the arbitration culture in India.
- In ‘Legislative Intent and Judicial Interpretation of “Conciliation Proceedings” under the Arbitration and Conciliation Act of India’, *Vyankatesh Singh* examines how Indian courts approach conciliation proceedings. The author discusses the Indian Arbitration and Conciliation Act 1996. Part III of the 1996 Act governs conciliation proceedings. Particular attention is paid to the 2003 decision of the Supreme Court of India in *Mysore Cement Ltd. v. Svedala Barmac LTD*. The author contends that the interpretation of Part III of the Act in *Mysore Cement* was overly legalistic, and that the practice of conciliation has suffered as a result.
- Section 10(a)(2) of the United States’ *Federal Arbitration Act* permits an arbitral award to be vacated ‘where there was evident partiality or corruption in the arbitrators, or either of them.’ The Supreme Court of the United States’ sole decision interpreting the ‘evident partiality’ standard in the non-disclosure context is *Commonwealth Coatings Corp. v. Continental Casualty Co.*, a plurality opinion handed down in 1968. *Ann Ryan Robertson* analyses *Commonwealth Coatings* and examines two recent decisions from the United States Circuit Courts involving non-disclosure that highlight the difficulty in applying the ‘evident partiality’ standard in the wake of *Commonwealth Coatings*’ plurality opinion. The author concludes that in the United States, prudence dictates that all known relationships be disclosed without reference to the quality of that relationship in order to escape scrutiny by the hypothetical ‘reasonable person’.
- *Leonila Guglya*’s article is based on her personal experience gained from participating at the Willem C. Vis International Commercial Arbitration Moot as an oralist, arbitrator and team coach in the past few years. *Guglya* discusses practical dilemmas arising in the course of the oral advocacy preparations of Moot team participants, including the selection and motivation of oralists, organising and conducting internal and external pre-moot rehearsals, and keeping a spirit of

cooperation and motivation during the practice phase. The article is aimed at encouraging debates over issues relating to the coaching of the Vis Moot teams with a view of preparing the next generations of Moot team participants in the best possible way.

We hope you enjoy the read.

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