Ashurst London
November 2013

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Features

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Features

Arbitration in Australia and ACICA

Georgia Quick, Partner, Sydney and Lorraine Hui, Senior Associate, Sydney

International arbitration in Australia is a growth area. In this feature article we look at the factors which have contributed to the increase in the number of international arbitrations seated in Australia and parties choosing to arbitrate under the auspices of the Australian Centre for International Commercial Arbitration (ACICA). We also highlight the particular issues parties need to bear in mind when agreeing to arbitration in Australia.

Why arbitrate in Australia and ACICA?

Australia has consistently had a reputation for being a safe, neutral seat for arbitration, supported by a stable political environment, a well-developed and independent legal system and a pool of sophisticated arbitrators and counsel, with a deep understanding and appreciation of issues prevalent in the Australasian landscape. The Australian International Disputes Centre based in Sydney has provided a world-class venue for arbitrations since opening its doors in 2010.

Furthermore, not only is Australia a signatory to the New York Convention[1], it has also enacted legislation – the International Arbitration Act 1974 (Cth) (IAA) – which gives effect to the 2006 version of the UNCITRAL Model Law on International Commercial Arbitration. Since undergoing significant amendments in 2010, the IAA now contains important provisions on obtaining from, and enforcing interim measures made by, the arbitral tribunal, confidentiality of information relating to the arbitral proceedings, and consolidation of two or more arbitrations.

The Australian courts have also demonstrated a good track record of enforcing arbitral agreements and awards. Notable examples include: *TCL Air Conditioner (Zhongshan) Co Ltd -v- The Judges of the Federal Court of Australia*[2] where the High Court upheld the constitutional validity of Articles 35 and 36 of the UNCITRAL Model law, and *Cape Lambert Resources Ltd -v- MCC Australia Sanjin Mining Pty Ltd*[3] which upheld the decision to stay proceedings in favour of the parties' agreement to submit disputes to arbitration.

Adding to the appeal of arbitrating in Australia is the availability of an institution with a set of rules which are at the forefront of international best practice. Amendments made to ACICA's Arbitration Rules in 2011 include the introduction of provisions on seeking urgent interim relief prior to the constitution of the arbitral tribunal (also known as 'emergency arbitration'). ACICA has also played a crucial role in the development of arbitration law in Australia. The ACICA Judicial Liaison Committee, chaired by a former Chief Justice of the High Court of Australia and whose members include arbitration judges, aims to promote uniformity in the rules and procedures relating to arbitration in Australia.

With the combination of an advanced legislative regime supporting arbitration, and a set of modernised institutional rules, it is unsurprising that both Australia as a seat of arbitration, and ACICA as the administering body, have become increasingly popular in recent years.

Furthermore, the number of disputes being arbitrated in Australia or involving Australian parties has particularly grown in the energy and resources sector.

Distinguishing features of ACICA arbitration

While ACICA arbitration shares many of the features commonly found in institutional arbitration, it has some distinguishing features. In particular:

1. **Emergency Arbitration:** ACICA's Arbitration Rules allow a party to apply to ACICA for emergency interim measures of protection (e.g. orders preventing dissipation of assets) prior to the constitution of the arbitral tribunal. The application for emergency arbitration may be made at the same time, or following the filing of the notice of arbitration. ACICA will use its best endeavours to appoint an emergency arbitrator within one business day. Once appointed, the emergency arbitrator is required to decide the application within five business days. The emergency interim measure is binding on the parties.

2. **Confidentiality:** Parties and arbitrators are required to keep confidential all matters relating to the arbitration, the award, the materials created for the purposes of the arbitration, and the documents produced by parties to the arbitration. To the extent that a witness is given access to evidence or other information produced in the arbitration, the party calling the witness is responsible for the maintenance of confidentiality by the witness.

3. **Interim measures:** Parties may apply to the arbitral tribunal for interim measures, including any temporary measure ordering a party to

preserve evidence that may be relevant to the dispute, or provide security for legal costs. An interim measure ordered by the tribunal is enforceable under the IAA.

4. **Rules of evidence:** The arbitral tribunal is required to have regard to, although it is not bound to apply, the International Bar Association Rules on the Taking of Evidence in International Arbitration.

5. **Expedited procedure:** Separate from the Arbitration Rules, ACICA also has Expedited Arbitration Rules, which provide a simplified arbitration procedure whereby a sole arbitrator determines the dispute based on documents, without the need for a hearing unless exceptional circumstances exist, and renders a final award within four or five months.

Aside from these particular features, ACICA's Arbitration Rules contain provisions on the appointment of arbitrators, similar to many other institutional rules. For example ACICA's Arbitration Rules provide that the parties have 15 days after the receipt by the respondent of the Notice of Arbitration to reach an agreement on the number of arbitrators. In the absence of such agreement, ACICA will determine the appropriate number of arbitrators (usually one or three), taking into account all relevant circumstances. The parties are free to appoint any arbitrator of their choice. Where the parties fail to appoint an arbitrator in time, ACICA will make the appointment.

ACICA arbitration is generally considered a relatively inexpensive option. ACICA's institutional fees consist of a non-refundable registration fee of A$2,500 payable with the notice of arbitration, and an administration fee which depends on the amount in dispute. The maximum administration fee payable is capped at A$99,000. Arbitrators are generally remunerated on the basis of an hourly rate. This is in contrast to some other institutions, such as the Singapore International Arbitration Centre, where arbitrators charge a fixed fee based on the amount in dispute.

Issues when arbitrating in Australia

We highlight below some issues which parties may wish to consider when arbitrating in Australia, or when entering into arbitration agreements providing for arbitration in Australia.

1. **Domestic and international arbitration regimes:** There are separate statutory regimes for domestic arbitrations (governed by State and Territory legislation) and international arbitrations (governed by the IAA, which is Commonwealth legislation). As noted above, the IAA adopts the UNCITRAL Model Law. The State and Territory legislation adopts many (although not all) of the provisions of the UNCITRAL Model Law as well.

2. **Opt in and opt out provisions:** The IAA contains a number of optional provisions. Examples of "opt in" provisions (i.e. provisions which apply only if the parties have so agreed) include the requirement to treat confidential all matters relating to the arbitration, and the ability of a party to apply for consolidation of two or more arbitrations. Examples of "opt out" provisions (i.e. provisions which apply unless the parties have agreed they will not apply) include the ability of a party to apply to court to issue a subpoena, and the power of the arbitral tribunal to continue proceedings and render an award even if a party fails to appear.

3. **Arbitrability:** Certain disputes are not arbitrable as a matter of Australian law. For example, there is legislation voiding arbitration clauses in insurance contracts, although this does not prevent parties from agreeing to arbitrate after a dispute arises.

4. **Similarities with court processes:** There may be a degree of inclination on the part of arbitration practitioners to mould the arbitration process to reflect court procedure, which they are accustomed to and familiar with. This may include importing into the arbitration features of litigation in Australia such as discovery of documents, representation by barristers and cross-examination of witnesses.

5. **Med-arb:** Med-arb is a hybrid process of mediation and arbitration. It involves the mediator trying to facilitate a negotiated resolution between the parties and, if the mediation fails to achieve a settlement, the mediator proceeds to act as arbitrator to settle the parties' dispute. While med-arb has gained some momentum in Asia, there has been little uptake in Australia.

For more information about arbitration in Australia and ACICA, see the chapter Ashurst wrote for the International Comparative Legal Guide, 2013.

Note:

1 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

2 [2013] 87 ALJR 410.

3 [2013] WASCA 66.

Anyone for baseball? The rise of "baseball arbitration" in FRAND patent disputes

Tim West, Associate, Sydney

"Baseball" or Final Offer Arbitration is a specific form of arbitration frequently adopted in the United States. But just as the rules of baseball are somewhat enigmatic to most European sports fans, baseball arbitration has been slower to catch on this side of the pond and elsewhere. Recently though, there have been signs that its use could become more prevalent in FRAND patent litigation. This article examines the basics of baseball arbitration, when it is a desirable alternative form of dispute resolution, and looks at why some consider it appropriate to resolve FRAND patent litigation.

Not playing ball: when tribunals split the baby

The concept of baseball arbitration has been around for some time. It originated in the early 1900s in Major League Baseball when a club and player could not agree on a salary figure and could, under certain circumstances, submit their respective figures to a sole arbitrator who was required to pick one of the figures. Baseball arbitration is designed to eliminate a practice which has emerged in international arbitration, where arbitrators "split the baby". That is, arbitrators split the difference between the parties' positions in coming to a middle-of-the-road compromise. Anticipating this assumed practice, parties are inclined to adopt extreme positions, thereby potentially reducing the chances of successful settlement.

Superficially, baseball arbitration has its appeal. Parties are incentivised to put more credible quantum estimates on the table. The arbitration, therefore, can be characterised as a game with one winner: each player seeking to maximise their chance of winning by balancing the reward of a better number for them against the risk that that number won't get chosen. The problem, of course, is that most complex, commercial disputes are more than just a fight over an amount due.

However, disputes over what constitutes an appropriate FRAND rate in patent litigation is one such type of dispute which could potentially lend itself to baseball arbitration.

FRAND

The obligation to licence patents on Fair, Reasonable and Non-Discriminatory (FRAND) terms arises when patents are deemed "essential" to a particular industry standard (so-called "standard essential patents" or SEPs). In telecommunications, industry standards are absolutely critical, among other things, in ensuring interoperability. For example, if a Motorola handset in France needs to be able to make a call to a blackberry in Japan, this means agreeing industry standards and the patented technology which makes up those standards.

The key issue with SEPs is that compliance with the standard necessarily infringes the patent and therefore a licence is required from the SEP holder. For example, anyone wishing to make a 3G compliant phone needs access to those patents which are deemed "standard essential" to the 3G standard. It is a prerequisite to market entry. However, the potential issue is of course that SEP holders then enforce the "hold up value" of their patents and unreasonably demand high royalty rates from potential market participants. As a result, standards bodies such as the European Telecommunications Standards Institute (ETSI) generally require its members (i.e. holders of SEPs) to commit to license on FRAND terms those patents that they have declared essential to a particular standard. The principle of FRAND (in this context) is an attempt by the standards setting bodies to mediate between a monopoly right, which by its nature is anti-competitive, and a competition law which promotes a level playing field in the market place. In other words, on the one hand ensuring that innovation by SEP holders is adequately remunerated, but on the other hand, allowing consumers a far wider choice and access to interoperable products.

FRAND and baseball arbitration: at first base

The global "patent wars" litigation has been in full swing for the past couple of years. One recurring issue in this worldwide flurry of lawsuits is how to calculate FRAND royalties. It is an issue that is currently vexing numerous courts and competition authorities worldwide. There is very little authority and even fewer litigated cases.

But is baseball arbitration the answer? Two leading US antitrust IP scholars think so. Professors Mark Lemley and Carl Shapiro, from Stamford and the University of California respectively, have argued that baseball arbitration is the ideal method of dispute resolution for resolving FRAND disputes. Their argument is that parties who are bound to engage in arbitration will render much of the associated FRAND disputes (such as antitrust) moot and the amount of litigation consequently will be greatly reduced.

However, the Lemley-Shapiro view is not universally held and some commentators believe that the courts are more than equipped to do an adequate job; and that the saved efficiencies claimed under an approach which makes baseball arbitration mandatory, do not withstand closer scrutiny.

It remains to be seen whether baseball arbitration's prevalence will grow, using the apparently eternal patent wars as a springboard in order to gain recognition in international arbitration circles outside the US. Either way, it is clear that baseball arbitration will only be attractive in limited circumstances and is unlikely to be a home run for many parties involved in complex, multi-issue disputes.

Legal developments

"Public policy of India" – not an easy excuse any more

Akshay Kishore, Associate, Singapore

In *Shri Lal Mahal Ltd. -v- Progeto Grano Spa*[4], the Supreme Court of India ruled that the broad interpretation of "public policy" used for setting aside a domestic arbitration award cannot be applied to enforcement of an international arbitration award in India. This judgment will be welcomed by parties that wish to enforce international arbitration awards in India. There is less likelihood that such awards will now be tested on merits before enforcement. However, the application of Shri Lal Mahal by the lower courts in India remains to be tested.

Background: the old regime

Under the New York Convention (NYC), the enforcement of an international arbitration award may be refused if the award is contrary to the public policy of the country where enforcement is sought. However, the term "public policy" is not defined.

This ground for refusing enforcement of international arbitration awards was adopted by the Indian legislature in the Arbitration Act, 1996 (Section 48). Following the NYC, the Indian legislature also failed to define the term "public policy".

The courts in India historically interpreted this term liberally, to the detriment of enforcing parties. In the case of *Oil & National Gas Corporation Ltd -v- Saw Pipes*[5]*,* the Indian Supreme Court ruled that a domestic arbitration award would not be enforced where it was against the public policy of India or the interests of India, including where a tribunal has made an error in applying Indian laws.

Following *Saw Pipes*, in the case *of Phulchand Exports Ltd -v- OOO Patriot*[6], the Supreme Court applied the broad principles of "public policy" to refuse enforcement of an international arbitration award, on the basis of review of merits and the patent illegality of the award. This effectively led to a situation where Indian courts started to review international arbitration awards on merits, before their enforcement in India.

Change of position: *Shri Lal Mahal*

The broad and all-encompassing application of the public policy ground in India prompted much international criticism. To rectify this, in *Shri Lal Mahal Ltd. –v- Progeto Grano Spa,* the Supreme Court of India ruled that the broad interpretation of "public policy" used for setting aside a domestic arbitration award cannot be applied to enforcement of an international arbitration award in India. In reaching this decision the Supreme Court made a distinction between enforcement of an international arbitration award, which follows the issuing of a final and binding award, and the procedure for setting aside a domestic award, where the award has not attained a final and binding status.

Therefore, the Supreme Court refused to apply the broad definition "public policy" as stated in *Saw Pipes*. Enforcement of an international arbitration award can only be opposed on grounds of "public policy" when the award is contrary to:

- the fundamental policy of Indian law;
- the interests of India; or
- justice and morality.

Comment

This judgment is welcome as it limits the circumstances in which the public policy argument can be raised as a means of challenging the enforcement of international arbitration awards. There is less likelihood that such awards will now be tested on merits, before enforcement. However, it remains to be seen how the lower courts in India will apply the decision in *Shri Lal Mahal.*

Note:

4 Civil Appeal No. 5085 of 2013.
5 (2003) 5 SCC 705.
6 2012(2) ALD 133 (SC).

English High Court decision highlights the need for caution when drafting for expert determination

The English High Court decision in *Walton Homes Ltd -v- Staffordshire County Council* is a useful reminder of the need for careful drafting where parties want the expert to decide legal as well as technical issues.[7]

Facts

The dispute concerned the meaning and effect of an overage clause in an agreement for the sale of land. The agreement provided that where the parties were unable to agree the sums due under the clause, the

matter would be referred to a surveyor as expert, whose decision was to be final and binding absent manifest error. The dispute concerned interpretation of how a certain sum was to be determined. Given the legal nature of the dispute, the expert retained Counsel to advise him. He based his Determination on that advice. This was then challenged in the High Court.

High Court Decision

One of the attractions of expert determination is the finality it offers. Unless the parties agree otherwise, there is no scope for judicial review. The only issue for the judge therefore was whether the determination (in effect, Counsel's opinion) was manifestly wrong. Although the judge considered that there were competing and legitimate arguments on both sides, he did not think that the decision could be considered "manifestly wrong". He therefore dismissed the action.

Comment

The nature of expert determination is such that once the expert gives his determination, there is very little a party can do to challenge that decision. Contracting parties may consider the quick solution expert determination offers to be worth that risk. However, careful thought should be given as to whether they want questions of law – where the arguments can be finely balanced – to be decided in this way.

If they do, thought should be given as to the identity of the expert to decide the disputes. As pointed out by the judge, expert determination may not be ideal where it leads to a surveyor deciding questions of law. Parties can cater for this by building in flexibility of choice as to the identity of the expert so that choice of expert is related to the nature of the dispute. Alternatively, provision can be made for the expert to appoint counsel to advise (as the surveyor did here) where the dispute raises legal questions.

7 [2013] EWHC 2554 (Ch).

Australian Federal Court enforces LMAA award

Tom Porter, senior associate, Perth and Madeleine Pope, lawyer, Perth

In September 2013, the Full Court of the Federal Court of Australia enforced an award issued in London under the auspices of the London Maritime Arbitrators' Association (LMAA). The decision confirms Australia as a pro-enforcement jurisdiction and highlights the weight Australian courts will give to decisions made by courts in the seat of the arbitration. The case also highlights a useful practical tip for dealing with settlement in arbitration.

Facts

A dispute arose between Coeclerici Asia (Pte) Ltd (the award creditor) and Gujarat NRE Coke Limited (the award debtor) regarding the purchase, by Coeclerici, of metallurgical coke. Coeclerici pre-paid $10 million to Gujarat for coke. The coke was not delivered. Coeclerici sought to recover the pre-payment. Gujarat only returned $2 million. Coeclerici commenced arbitration proceedings against Gujarat to recover the $8 million balance, together with liquidated damages.

Before the arbitration hearing, the parties entered into a payment agreement pursuant to which the proceedings were suspended and Gujarat agreed to repay the balance owing to Coeclerici on certain terms. Gujarat also agreed that if the amounts were not repaid in accordance with the payment agreement, Coeclerici would be entitled to an immediate consent award without the need for any pleadings or a hearing. Gujarat defaulted under the payment agreement and Coeclerici applied for, and obtained, a consent award. Gujarat sought to have the award set aside in the court of the seat, the English High Court, on the basis that there was a "serious irregularity" affecting the award because Gujarat had not had a reasonable opportunity to put its case. However, the Court found that Gujarat had had a reasonable opportunity to put its case and the application was dismissed.[8]

Coeclerici applied to the Federal Court of Australia to enforce the award. Gujarat resisted, again on the basis that it had not had a reasonable opportunity to put its case and, consequently, that the enforcement of the award was contrary to public policy because there had been a breach of the rules of natural justice (as contemplated by sections 8(7)(b) and 8(7A)(b) of the International Arbitration Act 1974 (Cth)).

Decision

The Federal Court allowed the application for enforcement, ordered payment of the award debt and made conditional orders for the appointment of receivers over certain shares held by Gujarat in Australia.[9] In arriving at this decision, the Federal Court found that:

- Gujarat had had a reasonable opportunity to put its case;
- in any case, there was an issue estoppel regarding the "reasonable opportunity" question, because that had been determined by the English High Court and so could not be re-litigated; and
- even if there were no issue estoppel, it would generally be inappropriate for the enforcement Court of a New York Convention country to reach a different conclusion on the same question as that reached by the court of the seat of the arbitration.

Gujarat unsuccessfully appealed to the Full Court of the Federal Court of Australia.[10] For the most part, the Full Court agreed with the findings of the Federal Court (although it did not consider it necessary to make a finding in respect of whether an issue estoppel obtained).

Implications

The Full Court's decision confirms Australia as a pro-enforcement jurisdiction and highlights the weight Australian courts will give to decisions made by courts in the seat of the arbitration.

It is also useful to note the way that settlement was reached and how it protected Coeclerici's enforcement rights. Settlement was reached four days before the arbitration hearing was due to take place. The arbitration proceedings were suspended (rather than terminated) pending payment of the sum, but the agreement entitled Coeclerici to resume the proceedings and apply for an immediate consent award in the event the payment was not made. It was that award that was enforced. This meant that Coeclerici avoided having to commence fresh proceedings for breach of the agreement, which they would have had to have done had the arbitration been terminated. A useful mechanism, particularly where settlement is achieved late in the day.

Note:

8 Gujarat NRE Coke Limited –v- Coeclerici Asia (Pte) Ltd [2013] EWHC 1987.

9 Coeclerici Asia (Pte) Ltd [2013] -v- Gujarat NRE Coke Limited [2013] FCA 882.

10 Gujarat NRE Coke Limited –v- Coeclerici Asia (Pte) Ltd [2013] FCAFC 109.

South Korea: Two arbitral awards refused enforcement this year

Mark Smith, Associate, Tokyo

In August, the South Korean courts refused to enforce an international arbitral award for the second time this year. We briefly summarise the available reports of the two cases, and consider their impact on South Korea's recent push towards establishing itself as a venue for international arbitration.

LSF-KDIC –v- KR&C

On 16 August of this year, the Seoul High Court refused to enforce an arbitral award against Korea Resolution & Collection Corporation (KR&C), part of Korea Deposit Insurance Corporation (a state-operated company).

The award in the amount of US$35 million had been made in 2011 in a Japan-seated ICC arbitration between KR&C and LSF-KDIC Investment Company, Ltd. (LSF-KDIC), a company backed by the Lone Star Finance private equity fund.

The arbitral tribunal had founded their jurisdiction on an arbitration clause in a shareholders' agreement to which KR&C and LSF-KDIC were both party. In finding jurisdiction, the tribunal had applied the Bermudian governing law of the shareholders' agreement to the arbitration agreement.

KR&C sought to resist enforcement of the arbitral award by LSF-KDIC through the South Korean courts. At first instance, in September 2012, the Central District Court of Seoul refused to enforce the award, ruling that enforcement of the award would be contrary to public policy.

On appeal, the High Court in Seoul took a different view in refusing to enforce the award. Applying the Japanese law of the seat of arbitration to the arbitration agreement, the court cited the lack of a valid arbitration agreement between the parties as the basis for its decision.

We understand that LSF-KDIC is considering an appeal to the Supreme Court.

NDS –v- KT Skylife

Earlier this year in January, the District Court of South Seoul also refused to enforce an arbitral award. This case concerned a software supply agreement entered into between NDS Limited (NDS), a UK-based software provider, and KT Skylife Limited (Skylife), a Korean broadcaster.

A dispute arose in relation to the supply agreement, which was referred to arbitration in Seoul under the UNCITRAL Rules. In the arbitration, NDS sought confirmation that the agreement had been validly terminated, whereas Skylife claimed that the supply agreement was still in effect and it therefore had the right to use the software.

In July 2012, the three-member tribunal delivered their award holding that the supply agreement had been terminated in 2010, and ordered Skylife to comply with its termination obligations as set out in the supply agreement.

Skylife failed to comply with the award, and NDS commenced enforcement proceedings in South Korea under the Korean Arbitration Act. On 31 January of this year, the South Seoul District Court delivered its judgment, refusing to enforce the arbitral award on the basis that it was not sufficiently specific as to the nature of the obligation to be performed by Skylife.

The court stated that an arbitral award must clearly detail the obligation to be performed, so that it could be enforced by the courts without reference to further documents. In this instance, the award referenced the relevant termination provisions of the supply agreement, but did not explain the scope of such obligations.

NDS has appealed the judgment to the Seoul High Court.

Comment
South Korea has recently been making positive efforts towards establishing itself as an arbitration-friendly jurisdiction. In 2011, the Korean Commercial Arbitration Board introduced new International Arbitration Rules, and we have also recently reported on the opening of the Seoul International Dispute Resolution Centre which hopes to promote South Korea as a venue for international arbitration.

While the South Korean courts are generally considered to be supportive of arbitration, these two cases may serve to undermine that reputation. Commentary in the arbitral community questions whether these cases reflect any formal policy shift in South Korea. Not surprisingly, therefore, the results of the appeals in both cases are anticipated with interest.

International news

New locations in Paris and New York for the ICC
It has been a busy few months for the ICC. Not only has the Paris HQ moved - to a larger more modern facility at 33-43 avenue du President Wilson, 75116 Paris – but in September it also opened a New York office. It is hoped that, by providing direct and convenient access to the ICC Court, the New York office will increase the amount of international ICC arbitration work being done in North America.

Ecuador appoints treaty audit commission
In October Ecuador's President confirmed that an audit commission will be set up to review the country's bilateral investment treaties (BITs). According to reports, the commission is to audit 26 BITs considered damaging to national interests. The commission, which includes Ecuadorean government officials and Latin American former judges, will evaluate the execution and negotiation process of the BITs and their compatibility with Ecuadorean law. It will also examine the validity and appropriateness of the actions adopted in proceedings against Ecuador and the legality of those decisions and will seek to identify past inconsistencies and irregularities.

The action reflects Ecuador's concerns regarding the increasing number of investment claims being brought against it, primarily by US energy companies and the action taken by the President to terminate the US/Ecuador BIT.

Argentina agrees to settle treaty awards
Argentina and the US have reached a deal to settle five investment treaty awards in favour of US creditors. The awards were originally issued in favour of CMS Gas, Azurix, Vivendi, Continental Casualty and National Grid, four of which were subsequently acquired by US creditors.

Under the agreement the creditors will receive bonds that mature in 2015 and amount to 85 per cent. of the face value of the awards. The creditors will be obliged to re-invest 10 per cent of the original amount of the awards in Argentine treasury bonds and have agreed to drop all pending legal actions and waive their right to recover legal costs.

It is suggested that the deal has been struck in order to discourage the US from blocking the US$1.8 billion in credit lines that Argentina is seeking to obtain from the World Bank and IMF. It is also thought that the deal will prompt the Obama Administration to present arguments before the US Supreme Court in favour of an appeal against a judgment in favour of holdout creditors who declined to accept exchange offers following Argentina's sovereign debt default in 2001. It is seen as a positive step for Argentina who is keen to show itself as a willing and obedient debtor.

Energy disputes project launches in Scotland
The International Centre for Energy Arbitration (ICEA) has been formally launched. The ICEA is the product of discussions between the Scottish Arbitration Centre and the Centre for Energy Policy, Mineral Law and Petroleum at the University of Dundee. Its stated mission is to research attitudes and trends in dispute resolution in the energy sector, to facilitate debate and promote best practice, and to be a centre of excellence and a resource for those involved in energy dispute resolution whether as party, advisor, or tribunal member.

From October 2013 the ICEA will consult the energy sector and work with relevant representative bodies to establish current trends and desired requirements in respect of dispute resolution within the industry. This research will support the proposed preparation of bespoke energy arbitration rules. See: http://www.energyarbitration.org/.

ISDA Arbitration Guide official

The 2013 ISDA Arbitration Guide has been officially published. The Guide offers guidance on the use of arbitration with an ISDA Master Agreement and provides a range of "ISDAfied" model arbitration clauses for various arbitration institutions and seats worldwide (Appendices A-G).

Updated Commercial Arbitration Rules published by the AAA: On 9 September 2013, the American Arbitration Association (AAA) published updated Commercial Arbitration Rules. These will apply to arbitrations commenced on or after 1 October 2013. Key changes include:

- Mediation must be considered for claims in excess of US$75,000 and, if chosen, will then run concurrently with the arbitration process until the beginning of the formal arbitration.
- Disclosure must be consistent with a cost-effective and expeditious arbitration.
- Sanctions will be brought against recalcitrant parties by assessing costs against them, or dismissing claims and counterclaims.
- Emergency relief will be available which enables the parties to arrange hearings quickly and grants the arbitrator the authority to make interim awards or orders.

UNCITRAL transparency rules adopted

The UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration will come into force on 1 April 2014. This reflects the particular need for transparency in investor-state disputes, which involve issues of public interest, as well as taxpayer funds. The transparency rules will apply to treaty-based investor-state arbitration but are not limited to arbitrations conducted under the UNCITRAL Arbitration Rules. They are available for use in investor-state arbitrations initiated under other rules, or in ad hoc proceedings. Future treaties referring disputes to the UNCITRAL Arbitration Rules will be subject to the transparency rules unless the parties agree otherwise. A new set of UNCITRAL Arbitration Rules will also come into force on 1 April 2014 and will include a paragraph ensuring that the link between these rules and the transparency rules is clear.

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