INTERNATIONAL ARBITRATION NEWS

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EDITORIAL by RUTH HOSKING

Information technology properly used has and can continue to facilitate the use of international arbitration as a dispute resolution mechanism as typical disputes involve parties, counsel and arbitrators in different parts of the world. E–mail and other electronic communications and electronic file management systems (for example) have frequently brought efficacy and cost reductions to the interactions between parties, counsel, arbitrators, experts, witnesses and others. It is an area of great interest to the International Arbitral Bodies: the ICC Commission on Arbitration and ADR (for example) has been reporting on Information Technology in International Arbitration since 2004. Its most recent report in March of this year seeks to provide an analysis of the role of IT and guidance upon how it may be used.

Recent developments in this area include the GESSEL Arbitration Wall app (an easily accessible and user-friendly database of documents frequently used in arbitration as well as reference material) and Dispute Resolution Data ("DRD"). The latter is an online data subscription service providing the first ever access to closed international arbitration and mediation process information and was awarded the GAR award for "Best Innovation in the Field of International Arbitration" earlier this year.

In international arbitration the potential of technology cannot be in doubt. However, the use of technology needs careful thought and management. It is possible to envisage some cases where the costs might outweigh any benefits or the use of technology might favour one party over another. As Simon Rainey QC's article in this edition of the Newsletter demonstrates, technology also brings with it potential pitfalls, not least the danger of hitting the "Reply All" email button. The use of technology may be an area which would be sensible for consideration by the Chartered Institute of Arbitrators in their Guidelines.

Further, we are delighted to welcome an article from our second guest contributor, Omar Omar of Al Tamimi assisted by his colleague Laila Al Shentenawi who provides insights into the development of EMAC, a new arbitration centre in the UAE.

Emirates Maritime Arbitration Centre set up in Dubai

Author: Omar Omar and Laila Al Shentenawi, Al Tamimi & Company

From pearl-diving, ocean commerce and traditional dhow construction to, more recently, the building of the world's largest man-made harbour in the form of Jebel Ali Port opened in 1979, it was only a matter of time before the UAE was required to house a world-leading maritime arbitration centre. It followed that the Emirates Maritime Arbitration Centre ("EMAC") was established, commencing its operations in September 2016.

EMAC is open to all users who choose to resolve their disputes in line with its 'Rules'. EMAC's Rules are tailor made for the maritime industry's needs and have some similarities with the UNCITRAL Arbitration Rules 2010. Having said this, the EMAC Rules seek to offer an attractive combination of popular existing rules from other familiar arbitral institutions and new and improved approaches and methods. The ultimate aim of the EMAC Rules was to bring a fresh touch to maritime arbitration and a more efficient and cost-effective arbitration process than the current maritime arbitration centres in other established maritime hubs.

Some of the distinguishing features of EMAC are:

The Rules are drafted to allow the arbitration to be set up and run with minimal involvement by the Tribunal giving more power to the parties to manage the process (the "light touch" approach).

The parties may agree on the seat of arbitration and the venue; however in the absence of agreement the default seat will be the Dubai International Financial Centre, with the DIFC Courts applying English law.

The Rules provide for multi-party arbitration, joinder, and emergency arbitration.

Arbitrators will have flexibility in deciding whether, given the value of a claim, it should be referred to fast-track arbitration which will be done in the most cost and time efficient way.

Continued overleaf

INTERNATIONAL ARBITRATION SET OF THE YEAR

NEWS

Retired Supreme Court Judge The Rt Hon Lord Clarke Joins Arbitrators at 10 Fleet Street

Arbitrators at 10 Fleet Street are honoured to welcome The Rt Hon Lord Clarke as an Arbitrator. Lord Clarke, who was one of the first Supreme Court Justices, retired from the Supreme Court in September this year and is now accepting appointment as arbitrator in commercial disputes.

David Goldstone QC is re-focusing his practice to act as an arbitrator. He continues to take on advisory work.

UPCOMING EVENTS

Support or interference? – The role of the Commercial Court in International Arbitration

Quadrant Chambers will be hosting an event on Tuesday 14 November 2017 with speakers Richard Power of Clyde & Co LLP, Sophie Lamb of Latham & Watkins and Guy Blackwood QC of Quadrant Chambers.

The event will be chaired by Ruth Hosking of Quadrant Chambers.

6 December 2017 Members of Chambers will be holding a mock arbitration, in association with HFW, in Geneva.

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Filing for arbitration may be done electronically by means of an automated portal in order to save cost and time.

Provisions for fast-track arbitration and rules for dealing with small claims.

EMAC offers a natural choice for the shipping industry and associated industries to settle their disputes through specialised arbitration in the region. EMAC's structure is designed to provide services to local, regional and international shipping communities. Dubai and the UAE expect that in time EMAC will take its place alongside the established centres for maritime arbitration.

Omar Omar is a partner and the head of the Transport & Insurance department at Al Tamimi & Company. Omar is ranked in band 1 by both Chambers & Partners and Legal 500. Omar heads a team of multinational shipping lawyers advising on many aspects of the shipping industry across the Gulf countries and the Middle East. Omar headed the team establishing and drafting the Emirates Maritime Arbitration Centre (EMAC).

Back to Basics?" Fundamentals of Good Tribunal Practice Restated (or the Perils of Email!)

Author: Simon Rainey QC

Two recent cases provide a reminder of the fundamentals of good practice by members of arbitral tribunals, and the potentially serious consequences of forgetting those fundamentals.

In ***Symbion Power LLC v Venco Imtiaz Construction Company*** [2017] EWHC 348 (TCC), the claimant challenged an arbitral award for serious irregularity under s.68(2)(d) of the Arbitration Act 1996. The case is of interest for the Court's comments on the propriety of arbitrator and party communications.

In mid-2014, the claimant's party-appointed arbitrator sent an e-mail to the claimant. It was not copied to the other members of the tribunal, nor to the defendant. The subject line of the e-mail was ***'HIGHLY CONFIDENTIAL: NOT TO BE USED IN THE ARBITRATION"***. Its purpose was to express dissatisfaction with the chairman's conduct.

Jefford J expressed her astonishment that the e-mail had been sent. Once the tribunal was appointed, it was wholly inappropriate for one arbitrator to communicate with a party without notice to the other members of the tribunal and the other party. Otherwise, it could give rise to concerns about the arbitrator's fairness and impartiality.

In ***P v Q*** [2017] EWHC 194 (Comm), the claimant sought to remove the two party-appointed arbitrators under s.24(1)(d)(i) of the Act on the basis that they had improperly delegated their functions to the tribunal's secretary.

The trigger for the application was a misdirected e-mail from the chairman. It was intended for the secretary, but was inadvertently sent to one of the claimant's paralegals. It asked for the secretary's reaction to the claimant's application for an extension of time.

This error resulted in a challenge before the LCIA Court to remove all three arbitrators for improper delegation to the secretary. The challenge was unsuccessful, save that the chairman was removed for other reasons. The claimant then unsuccessfully applied to the High Court for the removal of the other two.

Popplewell J held there was nothing offensive *per se* in an arbitrator receiving the views of others, provided that the conclusion reached was the result of independent decision-making.

Best practice was however to avoid asking a secretary to express a view on the substance of the matter which the tribunal had to decide.

The point to be taken from these two cases is the importance of any arbitrator asking the basic questions "what would the parties think if they knew what I am doing" or "how would this look if made public". Neither of the two events above should really have occurred and represent basic failures in appreciating the duty of and upon an arbitrator. The fact that the s.68 challenge fails is not a ground for arbitral self-satisfaction: the parties incurred unnecessary costs and procedural wrangling. A cruder and more pragmatic lesson is to beware of "reply to all"!

Simon Rainey QC of Quadrant Chambers, Simon is one of the best-known practitioners at the Commercial Bar with a broad commercial advisory and advocacy practice spanning substantial commercial contractual disputes, international trade and commodities, shipping and maritime law in all its aspects, energy and natural resources and insurance and reinsurance and has extensive experience of international arbitration.

RECENT EVENTS

Chirag Karia QC spoke on the recovery of litigation funding costs in arbitration following Essar v Norscot at the Arbitration Club in July.

David Semark & **Chirag Karia QC** spoke at the International Congress of Maritime Arbitrators in Copenhagen, 25-29 September 2017.

Nigel Cooper QC spoke at the Inter-Pacific Bar Association Asia-Pac Arbitration Day in Kuala Lumpur on arbitral structural reforms on 25 September 2017.

The inaugural Quadrant Chambers **International Arbitration Team Quiz Night** took place on 25 July with 8 teams competing for the prestigious trophy. We had teams from Baker & McKenzie, CMS UK, Pinsent Masons, Quinn Emanuel, Reed Smith, Stephenson Harwood, Stewarts Law and Wikborg Rein. Baker & McKenzie were victorious and have promised to return next year to defend their title.

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