ARBITRATION WATCH
June - 2022 Issue No. 56

Arbitration Centres

2022 ICSID Rules and Regulations coming into effect

The International Centre for Settlement of Investment Disputes (ICSID) has published the 2022 ICSID Rules and Regulations for resolving international investment disputes, which came into effect on 1 July 2022. This is the first amendment to the ICSID rules since 2006, and the most extensive modernization of ICSID procedures in the Centre's history.

The innovations introduced in the 2022 Rules and Regulations include measures designed to make cases more efficient, such as mandatory case management conferences and precise deadlines for key steps in ICSID procedures. New expedited arbitration rules will also be available to parties, which reduce case times in half.

A broader range of parties will now have access to ICSID's specialized rules and services. The ICSID Additional Facility—originally established in 1978—is now available for arbitration and conciliation proceedings where one or both disputing parties are not an ICSID Member State or a national of one. This contrasts with arbitration and conciliation under the ICSID Convention, which are only available to Member States and their nationals.

Regional Economic Integration Organizations (such as the European Union) may also be a party to proceedings under the amended Additional Facility Rules. This accommodates international investment agreements that are signed by those Organizations on behalf of regional entities.

Under the new rules, disclosure of third-party funding will be required throughout the life of a case to avoid conflicts of interest that may arise out of such financing arrangements.

LCIA Annual Casework Report 2021

The London Court of International Arbitration ('LCIA') published its Annual Casework Report. It acknowledges fewer referrals in 2021 compared with the 2020, but expects a return to numbers more closely aligned to 2019. In 2021, the LCIA received 387 referrals for its services, including 322 referrals for arbitration pursuant to the LCIA Rules.

In March 2022, following Decree No. (34) of 2021 of the Government of Dubai, the LCIA and Dubai International Arbitration Centre (DIAC) concluded an agreement by which the LCIA would administer all existing DIFC-LCIA cases from London. Approximately 130 DIFC-LCIA cases are now being administered from London and a payment mechanism has been agreed in relation to the funds paid by parties into bank accounts previously held on behalf of DIFC-LCIA and now owned by DIAC. More details on these cases will be reported in next year's Annual Report.

The top three industry sectors of the LCIA's caseload remain banking and finance, energy and resources, and transport and commodities (together representing 65% of all cases).

International Arbitration

London Steam-Ship Owners' Mutual Insurance Association v. Kingdom of Spain

Judgment of the European Court of Justice dated 20 June 2022, Case C-700/20

In the appeal against the recognition by the High Court in the United Kingdom of the Spanish judgment against The London Steam-Ship Owners' Mutual Insurance Association Limited ('the London P&I Club'), the Grand Chamber of the European

Court of Justice ('ECJ') has made a land-marking ruling in a clash between an arbitral award and a judicial decision.

The ECJ was asked, in essence, whether the recognition in the United Kingdom of the Spanish judgment in the Prestige sinking case could be refused on the basis of the existence of an arbitral award the effects of which are irreconcilable with those of the Spanish judgment.

As a preliminary point, the ECJ noted that the Regulation (EU) No 44/2001 excludes arbitration from its scope, meaning that it cannot afford mutual recognition to an arbitral award. The ECJ goes on with the interpretation of article 34(1) and (3) of the Regulation (EU) No 44/2001 (now repealed and replaced by Regulation (EU) No 1215/2012), which provides that a judgment shall not be recognised if (1) such recognition is manifestly contrary to public policy in the Member State in which recognition is sought, or (3) it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought.

The ECJ's interpretation is literally as follows:

"Article 34(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a judgment entered by a court of a Member State in the terms of an arbitral award does not constitute a 'judgment', within the meaning of that provision, where a judicial decision resulting in an outcome equivalent to the outcome of that award could not have been adopted by a court of that Member State without infringing the provisions and the fundamental objectives of that regulation, in particular as regards the relative effect of an arbitration clause included in the insurance contract in question and the rules on lis pendens contained in Article 27 of that regulation, and that, in that situation, the judgment in question cannot prevent, in that Member State, the recognition of a judgment given by a court in another Member State."

"Article 34(1) of Regulation No 44/2001 must be interpreted as meaning that, in the event that Article 34(3) of that regulation does not apply to a judgment entered in the terms of an arbitral award, the recognition or enforcement of a judgment from another Member State cannot be refused as being contrary to public policy on the ground that it would disregard the force of res judicata acquired by the judgment entered in the terms of an arbitral award."

Case note: England & Wales

Laysun Service Co Ltd v Del Monte International GmbH [2022] EWHC 699 (Comm)

Facts: Out of a Contract of Affreightment ("COA") between Laysun Service Co Ltd ("Owners") and Del Monte International GmbH ("Charterers") for a trade of bananas into Iranian ports, only the first 17 shipments were performed, leaving 19 unperformed shipments. The COA could not be fully performed by the Charterers due to two established facts: on one hand, the imposition of US sanctions against Iran prohibiting any payments to or from Iranian banks ("the Payments Issues"), and, on the other hand, the restriction of import permits by Iran ("Import Permits Issue"), which made impossible to import bananas into Iran between April and at least June 2018. Owners sued for their losses Charterers in arbitration. Applying a *force majeure* provision of the COA, the Tribunal found that Charterers engaged no liability for non-performance. Owners thereafter obtained permission to appeal under section 69 of the Arbitration Act. They argued that, as a matter of law, Charterers could not validly rely on the *force majeure* clause and raised questions of law on the two grounds of non-performance.

Held: The Court dismissed the Owners' appeal. Calver J. found that Owners' suggested questions of law were either premised on false factual findings, or were ultimately not questions of law at all.

In relation to the Payments Issues, Owners' suggested question of law was that the Charterers were not entitled to invoke the force majeure clause "because payment difficulties in related sale and purchase contracts (to which neither the Charterers nor the Owners were party) meant that bills of lading might not arrive at the discharge

port so that the Owners would then have the right to decline to permit delivery of the goods carried until surrender of the Bills of Lading". This question was, according to Calver J., "*based upon an entirely false factual premise.*" Without the bills of lading the goods could not clear customs, which was a necessary step to take place prior to discharge. Calver J. said: "*the Owners are shooting at an imaginary target; the so-called error of law in respect of the Payments Issue simply does not arise.*"

Turning to the Import Permits Issue, Owners' appeal focussed on the period of non-performance. Owners argued that the *force majeure* defence only operated if the underlying event was continuing, which meant that Charterers had to resume performance once the import restrictions had expired. Calber J. reminded that the Tribunal had already rejected this submission, holding that the *force majeure* effect may continue even if the event has ceased (in this case, it was not possible for Charterers to find new Iranian receivers even once import restrictions were relaxed). Calver J confirmed that a party may, subject to the wording of the *force majeure* provision, continue to be excused from non-performance if the *force majeure* event is outlasted by its effects. Calver J. concluded saying: *"In all the circumstances, the appeal is doomed. It is constructed on a false factual premise and even then impermissibly seeks to challenge the Tribunal's findings of fact."*

About us

Ana Maria Daza-Clark

has authored *Resolving Water Conflicts: Dispute Settlement Mechanisms Applicable to International Water Resources*, a PeaceRep Report published by the School of Law of the University of Edinburgh. The report sets out in very general terms the international legal framework that supports dispute resolution, focusing in particular on a range of dispute mechanisms that are available to states with transboundary water disputes that could be considered to be part of any 'tool kit' of conflict avoidance or resolution. Ana Maria Daza-Clark is a Lecturer in International Law at the University of Edinburgh and the Director of the International Economic Law Postgraduate Programme. She is off-Counsel in AACNI in London.

For more information, please contact any of the following members of our Arbitration Team:


Albert Badia


Daniel Behn


Ana Maria Daza


Erman Ozgur

An International Law Firm

AACNI (UK) LTD.

25 Southampton Buildings | WC2A 1AL London | United Kingdom Phone: +44 02071291271 | Email: aacni@aacni.com