

Arbitration Update

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Nations Convention on Contracts for the
International Sale of Goods.

For more information about this event, click [here](#).

EVENTS

Upcoming: 3rd Annual GAR Brazil - 19 March 2015 – São Paulo, Brazil

Gustavo Fernandes de Andrade, partner of the arbitration practice of Tauil & Chequer in association with Mayer Brown, will be talking on arbitration at the next *Annual GAR in Brazil* to be held in São Paulo on 19 March 2015, at the Hotel Unique. Other speakers will touch upon topics that will include M&A related arbitration disputes and how to be a good arbitrator.

22nd Willem C. Vis International Commercial Arbitration Moot – 28 March to 2 April 2015 – Vienna, Austria

For the 22nd year, law students and arbitration practitioners from around the world will meet from 28 March to 2 April 2015 in Vienna, Austria for the Willem C. Vis International Commercial Arbitration Moot. The Moot is organized by the Association for the Organization and Promotion of the Willem C. Vis International Commercial Arbitration Moot (Verein zur Veranstaltung und Förderung des Willem C. Vis International Commercial Arbitration Moot). The goal of the Moot is to foster the study of international commercial law and arbitration for resolution of international business disputes through its application to a concrete problem of a client, and to train law leaders of tomorrow in methods of alternative dispute resolution. The Moot involves a dispute arising out of a contract of sale between two countries that are party to the United

LEGAL UPDATES

Amendments to the Internal Rules of the Brazilian Superior Court of Justice on Recognition of Foreign Decisions

On 17 December 2014, the Brazilian Superior Court of Justice amended its internal rules pertaining to the provisions on recognition of foreign awards. The most relevant amendment was the inclusion of Article 216-F, providing for offense to human dignity as a ground for refusing recognition of foreign decisions, which also applies to foreign arbitral awards. While offense to human dignity is not set forth as a ground for refusing recognition of foreign arbitral awards in the Brazilian arbitration law and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, respect for human dignity may be considered as expressly recognized by the Brazilian Constitution as an essential principle for the State, and thus an element of Brazilian public policy. Violation of public policy is a ground for refusing the recognition of foreign arbitral awards both under the Brazilian arbitration law and the New York Convention.

For more information about the new text, click [here](#).

The New Brazilian Civil Procedure Code and Arbitration

On 16 March 2015 the Brazilian President signed the bill enacting the new Code of Civil Procedure. The new Code will make some changes with respect to arbitration, the main being the *carta arbitral*, which allows arbitrators to request adoption of enforcement measures directly from the courts, such as the deposition of uncooperative witnesses. The new Code also provides for the confidentiality of legal proceedings related to arbitration if the parties establish that the arbitral proceedings were held in confidentiality.

New ICC Expertise Rules – entry into force on 1 February 2015

The ICC launched its new Expertise Rules (applicable as from 1 February 2015), which set out the parameters for expert services under the administration of the ICC International Centre for Expertise, replacing the 2003 version.

The new Expertise Rules, initially available in English, French and Spanish, make clear how parties may rely on experts and neutrals to help resolve cross-border disputes. Three sets of rules are applicable, each one covering different areas of ICC dispute resolution services: the Proposal of Experts and Neutrals, the Appointment of Experts and Neutrals and, the Administration of Expertise Proceedings.

The Expertise Rules are available to various industries, such as construction, finance and information technology, among others, and may be applied while arbitration or court proceedings are still pending.

For more information about the new ICC Expertise Rules, click [here](#).

New Arbitration Rules of the China International Economic and Trade Arbitration Commission (CIETAC) – entry into force on 1 January 2015

The new CIETAC Arbitration Rules came into effect on 1 January 2015 and follow the changes adopted in the arbitration rules of major institutions. Key changes include the possibility of multi-contract arbitrations (Article 14), joinder of additional parties (Article 18), consolidation of arbitrations (Article 19), recourse to an emergency arbitrator (Article 23.2) and an increased threshold for summary procedure (amount in dispute below USD 325).

For more information about the new CIETAC Arbitration Rules, click [here](#).

Palestine accedes to the New York Convention

On 2 January 2015, Palestine Authority officials presented to the United Nations documents for accession to 16 international conventions and treaties, including the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

“This is a very significant step [...] to seek justice through legal option”, says Riyadh Mansour, Permanent Observer of Palestine to the UN.

On 7 January 2015, the UN Secretary General Ban Ki-Moon officially accepted the request for Palestine’s adhesion to the New York Convention.

PUBLICATIONS

Reshaping the Investor-State Dispute Settlement System: *Journeys for the 21st Century*

Reshaping the Investor-State Dispute Settlement System: Journeys for the 21st Century featuring among other authors Roberto Figueiredo, partner of the arbitration practice of Tauil & Chequer Advogados in association with Mayer Brown, was just published. The book offers practical suggestions for the reform of the current investment disputes resolution system. The book focuses on the strengthening of the role of states, structural and institutional reforms, and innovations by arbitral tribunals.

Article “Challenging arbitrators” (in German), by Dr. Mark C. Hilgard

The article “Challenging arbitrators” (original title: “*Zur Ablehnung eines Richters im Schiedsverfahren*”), written by Dr. Mark C. Hilgard, partner of the arbitration practice of Mayer Brown in Frankfurt, was published in the German legal journal “BetriebsBerater” (issue Nr. 9/2015). The article deals with material grounds for challenging arbitrators under German law, different arbitration rules and the IBA Guidelines (International Bar Association), as well as procedural issues during arbitral proceedings and before state courts.

CASE LAW

The end of sports arbitration in Germany?

A decision of the Higher Regional Court of Munich (“*Oberlandesgericht München*”) dated 15 January

2015 could have a material effect on sports arbitration in Germany. The German court decided that an arbitration clause inserted in the enrolment form for a competition organized by the International Skating Union (ISU) is null and void.

The dispute arose in 2009 after Ms. Claudia Pechstein, German speed skater and winner of several Olympic medals and other competitions, was suspended for a period of two years due to alleged doping. After an unfavorable arbitral award rendered under the Arbitration Rules of the Court of Arbitration for Sports (CAS), the main institution for the settlement of sport disputes, Ms. Pechstein challenged the award before the Higher Regional Court of Munich. Ms. Pechstein contended that she had been forced to accept the arbitration clause, since ISU is the only organizer of speed skating competitions and the clause was inserted in the enrolment form to the competition, so she could not opt out of it.

The Higher Regional Court of Munich accepted Ms. Pechstein’s arguments. According to the decision, the imposition of the arbitration clause is contrary to the rules of competition law and to public policy. If there is no other entity organizing similar events, ISU is not allowed to impose the clause on athletes. The German court further added that the composition of the arbitral tribunal pursuant to the CAS Rules did not seem to guarantee equal treatment to both parties.

ISU filed an appeal to the German Federal Court of Justice (“*Bundesgerichtshof*”) against the decision. Meanwhile, possible reactions to this decision are, on the one hand, a review of the CAS Rules, and on the other, a change in the way arbitration clauses are concluded with athletes, in order to reduce the negative impact of the decision.

For more information (in German) about this decision, click [here](#).

If you would like further information, please contact:



Gustavo Fernandes

+55 (21) 2127-4271

gfernandes@mayerbrown.com



Roberto Figueiredo

+55 (21) 2127-4234

rfigueiredo@mayerbrown.com