

# International Arbitration Newsletter

Spring 2010

**OLSWANG**



Los Angeles



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**The information contained in this update is intended as a general review of the subjects featured and detailed specialist advice should always be taken before taking or refraining from taking any action.**

# Introduction



Welcome to the Spring 2010 edition of Olswang's International Arbitration Newsletter. We report in this Newsletter on important recent cases of the English courts which we have selected not only because they are important recent developments of English arbitral law but also because they highlight, each in a different way, the importance of accurate drafting and effective incorporation of the arbitration agreement. The facts of each of the cases illustrate the price of failing to achieve this, namely wasted time and costs and judicial intervention.

We report on *Secretary of State for Transport v Stagecoach South Western Trains Ltd* [2009] EWHC 2431 (Comm) (page 4) which illustrates how time and costs can be incurred over jurisdictional challenges where parties fail to use clear words to identify the disputes to which the arbitration agreement applies. The importance of clear drafting is referred to again in our News section (page 13) in which we report on the recent publication by the International Bar Association's Arbitration Committee of its final draft Guidelines for Drafting International Arbitration Clauses.

We also report on *Norscot Rig Management PVT Ltd v Essar Oilfields Services Ltd* [2010] EWHC 195 (Comm) (page 3) and *Habas Sinai Ve Tibbi Gazlar Isthisal Endüstri A.S. v Sometal S.A.L.* [2010] EWHC 29 (Comm) (page 8) which both highlight how the parties' failure expressly to include an arbitration agreement in the contract from which their disputes arose necessitated reliance on arbitration agreements in other related contracts. This oversight or error is not a rare occurrence in circumstances where, for example, the parties are engaged in a project and include an arbitration agreement only in one of the contracts relating to the project (as in *Norscot*) or where the parties enter into repeat contracts with each other involving substantially the same terms and use "short-hand" drafting which merely refers to terms in previous contracts (as in *Habas*). In both cases, time and costs were expended on challenges as to the tribunal's jurisdiction over the dispute, not only involving the tribunal but also the English court under section 67 of the Arbitration Act 1996.

*SOS Corporacion Alimentaria SA & Or v Inerco Trade SA* [2010] EWHC 162 (Comm) involved the incorporation by reference of arbitration provisions including a time limit for the commencement of arbitration. The case highlights the need for parties to be mindful of terms which they have incorporated by reference, for example by reference to trade rules or arbitral institutional rules. Parties should be mindful as to whether such rules contain, for example, time limits for the commencement of arbitration, as *SOS Corporacion* shows that the ability of the English court to extend time for the commencement of arbitration where a time limit has previously been agreed is more limited under the current Arbitration Act than under previous legislation.

Finally, our article on *Buyuk Camlica Shipping Trading & Industry Corporation Inc v Progress Bulk Carriers Ltd* [2010] EWHC 442 (Comm) discusses the relevance of merit in a challenge to an award on the grounds of serious irregularity under section 68(2)(d) of the Arbitration Act 1996.

With thanks to our contributors to this Newsletter - Oliver Gayner, Ned Beale, Jessica Rivett and Katerina Maidment.

**Richard Bamforth, Head of International Arbitration**



## Recent case law on the interpretation of arbitration agreements

Three years on from the House of Lord's expression in *Fiona Trust*<sup>1</sup> of the presumption that business people want arbitration to be a one-stop method of adjudicating all of their related disputes, two recent cases show how the courts are applying that presumption in construing arbitration agreements.

- *Norscot Rig Management PVT Ltd v Essar Oilfields Services Ltd* [2010] EWHC 195 (Comm)
- *Secretary of State for Transport v Stagecoach South Western Trains Ltd* [2009] EWHC 2431 (Comm)

The decision in *South Western Trains Ltd* shows both (1) the courts proceeding on the basis of the presumption that rational business people, choosing arbitration, are likely to have intended that all their related disputes be heard in a "one stop" adjudication by means of arbitration; and (2) the extent to which that presumption is rebutted in the face of evidence that the parties in fact intended that more than one method of dispute resolution would apply to resolve their disputes arising out of the same contract.

### Facts

A franchise agreement between the parties allowed for adjustment payments to be made by the franchisor if there was a shortfall to the franchisee as against target revenue. A dispute arose because the parties could not agree how such future payments were to be calculated.

The arbitration provisions in the franchise agreement were said to apply if "either party disputes the amount of the franchise payment". In all other circumstances, the dispute was to be determined by the High Court. The franchisee sought to refer the dispute over future payments to arbitration. The franchisor applied to the court, under section 72(1)(c) of the Arbitration Act 1996, for a declaration that the dispute was not one which fell within the parameters of the arbitration agreement, on the basis, it submitted, that the wording of the arbitration agreement ("either party disputes the amount of the franchise payment") referred only to payment obligations which had already accrued and not to a dispute as to the method for calculating future payments.

### The decision

#### Rebutting the presumption of one stop adjudication

Before addressing the specific dispute which had arisen, the court acknowledged that the franchise agreement envisaged that some types of disputes would be resolved by litigation and others by arbitration,

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<sup>1</sup> *Fiona Trust & Holding Corporation & 20 Ors v Yuri Privalov & 17 Ors sub nom Premium Nafta Products Ltd (20th Defendant) & Ors v Fili Shipping Co Ltd (14th Claimant) & Ors* [2007] UKHL 40.

given that the arbitration agreement applied only to disputes as to "the amount of the franchise payment". So, for example, a dispute as to limitation of liability or termination or repudiatory breaches could only be resolved in the courts.

In acknowledging this, the court showed that it is prepared to depart from the presumption expressed in *Fiona Trust* of the proclivity of commercial people for their related disputes to be adjudicated in a "one stop" single forum, if there is evidence of a contrary intention.

### **Applying the presumption**

As to the question in issue, namely whether a dispute as to the amount of a future franchise payment fell within the arbitration agreement, the court acknowledged that on the strict wording of the franchise agreement and the arbitration agreement within it, the issue was finely balanced. In other words, there was a case for the franchisor's argument that the arbitration agreement applied only to disputes as to payments already accrued and not to disputes over the calculation of future payments.

However, when one considered the objective intentions of the parties at the time that they agreed the arbitration agreement, the balance was tipped in favour of its construction as providing for arbitration as a one stop method of adjudicating all disputes relating to payments under the franchise agreement. The court said that the commercial sense of a suggested construction is a criterion of obvious relevance and importance in seeking to ascertain the objective intentions of parties to a commercial contract. In the case in hand, there was no commercial rationale for the conclusion that the parties had bargained for the same dispute on payments to proceed either to court or arbitration, depending only on its timing, that is, depending on whether the payment had already accrued or whether the dispute related to a future payment.

### **Post-agreement considerations of practicability or convenience are irrelevant**

In *South Western Trains* the court was willing to sacrifice a little tidiness in the wording of the arbitration agreement (provided there was no violence to it) in order to allow for an interpretation underpinned by a commercial rationale. The decision in *Norscot Rig Management PVT Ltd v Essar Oilfields Services Ltd* [2010] EWHC 195 (Comm), however, emphasises that the focus must always be on the parties' intention at the time that the purported arbitration agreement was made and must not involve an independent assessment by the court of the interpretation which will allow for the most practical and convenient consequences in light of the dispute which has arisen.

In *Norscot*, the court criticised the tribunal which, when seeking to interpret the relevant arbitration agreement, appeared to have made its own assessment of the practical implications of each suggested interpretation with the benefit of hindsight, rather than focus on ascertaining the intention of the parties at the time that the agreement was made.

The claimant commenced an arbitration under the arbitration agreement contained in an Operations Management Agreement ("OMA") between it, as Operations Manager of a drilling rig, and the defendant which had obtained a two year drilling contract with Gujarat State Petroleum Corporation for drilling operations off the coast of Andhra Pradesh in India. In the arbitration the defendant submitted certain set-offs and counterclaims relating to the refurbishment and sale of a second hand Blow Out Preventer Stack by the claimant to the defendant for fitting to the rig. The claimant challenged the jurisdiction of the tribunal

to adjudicate those set-offs and counterclaims on the basis that they arose not from the OMA but from separate (although related) contracts which did not contain an arbitration agreement.

The arbitration agreement in the OMA provided that it would apply to "Any dispute, controversy or claim arising out of or relating to this agreement, or the breach, or invalidity thereof...". The tribunal, constituted under the ICC Rules, ruled that it did have jurisdiction to hear and determine the defendant's set-offs and counterclaims because, although they did not arise out of the OMA, they were "relating to" the OMA and therefore fell within the arbitration agreement. The claimant challenged the award in the High Court under section 67 of the Arbitration Act 1996.

In the award, the tribunal indicated that it had based its conclusions on questions of convenience and on the "broader concept of practicability", concluding that it was more practicable to have the defendant's set-off disputes decided under the same roof as the claimant's claims under the OMA in order to avoid, for example, inconsistent outcomes and increased costs. It also said that it would be open to a party to show that separate proceedings would be more cost effective than a combined process or that it would be less problematic to keep them separate. Rather than try to ascertain the intention of the parties at the time that they made the arbitration agreement, the tribunal seemed to be trying to make its own assessment, as at the preparation of the award, of the implications of each suggested construction of the arbitration agreement.

In the decision of the section 67 application, whilst the court agreed with the tribunal's conclusion that it had jurisdiction to hear the defendant's set-offs and counterclaims because they "related to" the OMA and therefore fell within the arbitration agreement, it criticised the wider exercise which the tribunal had appeared to undertake when it took note of the convenience and practicability of each suggested interpretation of the arbitration agreement. The steps which the tribunal had taken in order to reach its conclusion were akin to the exercise which courts undertake in order to decide whether to refuse to accept jurisdiction over a claim where there is a more appropriate forum available to the parties on the grounds of convenience or practicability (known as "forum non conveniens"). The court held that there was no place for forum non conveniens type issues in the resolution of what was, in fact, a jurisdiction question arising out of the construction of an arbitration clause.

## Culpable delay can preclude extension of time limits for commencement of arbitration under section 12 of the Arbitration Act 1996

In *SOS Corporacion Alimentaria SA & Or v Inerco Trade SA* [2010] EWHC 162 (Comm), the Commercial Court considered the circumstances in which extensions of time will be granted under section 12 of the Arbitration Act 1996 for arbitrations commenced out of time. The court's decision to refuse the claimant's application for an extension illustrates the perils of delaying commencement of arbitration proceedings beyond the applicable deadline. As a consequence, the claimant suffered the triple indignity of suffering significant damage to its goods, finding itself time-barred from obtaining any remedy, and being left to pick up the legal bill from three separate applications for extensions.

### Facts

The claimant bought two shipments of Ukrainian sunflower seed oil from the defendant. Nearly four months after delivery, the EU issued an alert concerning industry wide contamination of Ukrainian sunflower oil with mineral oil. The claimant tested the goods, discovering contamination and promptly embarked on a recall programme from its customers. However, it did not commence arbitration proceedings against the defendant under the arbitration provisions contained in the trade rules which applied to the supply contract, the Rules of Arbitration and Appeal of the Federation of Oil, Seeds and Fat Association ("FOSFA"), until some five months after the EU alert.

The defendant argued that the arbitral proceedings were time-barred under the FOSFA Rules and the time-bar issue was referred to the arbitrators as a preliminary issue for determination. (Under Article 2 of the FOSFA Rules, any claims on quality and/or condition must be brought within 120 days from delivery). FOSFA Rules confer on a tribunal an absolute discretion to extend the time limit for commencement of an arbitration. The arbitrators at first instance exercised their discretion in favour of the claimant and extended the time limit. However, the FOSFA board of appeal overturned that award, finding that the claimant's defence of ignorance of the time limits was no excuse. If the claimant had brought proceedings immediately once the contamination had been discovered, an extension might have been appropriate but there was no good reason for the claimant's delay of a further five months. To extend the time limit and allow the arbitral proceedings to continue would be to cause unfair prejudice to the defendant who was entitled to rely on the letter of the FOSFA Rules.

The claimant applied to the Commercial Court seeking a time extension under section 12 of the Arbitration Act 1996 by which the court may grant extensions to time-barred claims in circumstances which are beyond the reasonable contemplation of the parties. The court acknowledged that the contamination was not something that could reasonably have been discovered before the time limit expired because contamination by mineral oil is not routinely tested in the context of sunflower oil. In principle, therefore, the lapse of time could constitute a "circumstance beyond the reasonable contemplation of the parties" at the time of contract. However, the claimant fell foul of the second limb of the test under section 12(3) of the 1996 Act by which regard must be had to the justice of an extension of time. The court considered that:

(a) the arbitrators of the board of appeal, with their trade experience and in their absolute discretion, had considered the delay by the claimant (even once the contamination had been discovered) to be unacceptable;

- (b) significant weight should be placed on that decision, and an extension of time should only be granted if the case was out of the ordinary and there were good reasons to do so in the interests of justice;
- (c) the delay by the claimant after the contamination was discovered was culpable, and as a result justice weighed against granting the extension.

## **Analysis**

The judgment contains a number of interesting conclusions. The respect showed by the court to the board of appeal's position as a trade body is a reminder that the English Commercial Court will grant a wide margin of discretion to arbitrators to determine matters which fall within their own industry. The court accepted the force of the defendant's submission that it would be an unwarranted intrusion on party autonomy for the court to substitute its own judgment as to whether an extension of time ought to be granted for that of the parties' contractually agreed tribunal, particularly where that tribunal was a trade tribunal which had regard to the practices and expectations of the trade.

The message for commercial parties is more straightforward: have regard to time limits for bringing arbitrations under applicable trade rules and do not delay bringing proceedings once a cause of action has arisen or seek any counterpart's agreement to an extension before time expires. Do not assume that such an extension will be forthcoming.

## **Post-script**

The court took the opportunity to confirm that the second limb of the section 12 test, based on the "justice in the circumstances", has replaced the "undue hardship" test that was formerly applied in respect of section 27 of the Arbitration Act 1950. "Undue hardship" had been given a broad meaning by the courts and a relatively benevolent application. In its review of the Arbitration Bill which was to become the Arbitration Act 1996, the Departmental Advisory Committee ("DAC") remarked that section 27 of the 1950 Act seemed to reflect a time when the English courts "were flirting with the idea that they enjoyed some general power of supervisory jurisdiction over arbitrations". Section 12 of the 1996 Act marked a clear change, in particular to reflect the underlying philosophy of the 1996 Act of party autonomy with limited judicial intervention. The case law relating to the 1950 Act is therefore of limited value.

## Incorporation of an arbitration agreement by reference – the Court of Appeal provides clarification of the law where multiple contracts exist between the same parties

The Court of Appeal's ruling in *Habas Sinai Ve Tibbi Gazlar Isthisal Endüstri A.S. v Sometal S.A.L.* [2010] EWHC 29 (Comm) clarifies whether general or specific words of incorporation are required successfully to incorporate an arbitration agreement by reference to a previous contract between the same parties. In doing so, the Court of Appeal cast light on a misleading term used in previous related authorities and formulated a new means to ascertain the nature of the words required.

### Facts

The application was made by the claimant to set aside an interim final award on jurisdiction under section 67 of the Arbitration Act 1996. There had been 14 previous contracts between the parties. The first three of those were prepared by the claimant and, in the case of the first two, provided for arbitration under UNCITRAL rules. The third provided for disputes to be referred to the Istanbul Court of Arbitration. The next 11 contracts were either prepared by the defendant or its agent. Those prepared by the defendant provided for London arbitration. Like previous contracts which had been prepared by the defendant's agent, contract 15 which was the contract relevant to the dispute ("Contract 15"), set out some specific terms (which did not include the arbitration clause) and then stated that "all the rest will be the same as our previous contracts".

When a dispute arose under Contract 15, the defendant commenced LCIA proceedings, to which the claimant objected on the basis that it contended that the words used in Contract 15 were not capable of referring to the London arbitration clause of previous contracts and therefore the tribunal did not have jurisdiction. The tribunal disagreed and held that the parties had intended to refer to the contracts previously prepared by the defendant which did contain an agreement providing for London arbitration.

In considering the claimant's challenge to the award on the grounds of lack of substantive jurisdiction, the court had to consider whether the London arbitration agreements contained in the contracts prepared by the defendant had successfully been incorporated into Contract 15 which had been prepared by the defendant's agent and which did not expressly contain an arbitration agreement but contained the general words of incorporation "all the rest will be the same as our previous contracts". The issue for the court was whether (a) in principle, general words of incorporation, and (b) specifically the words in Contract 15, were capable of incorporating an arbitration agreement by reference to previous contract(s) between the same parties.

### Past authorities: a distinction between "single contract" and "two contract" scenarios

Having conducted a thorough review of the relevant case law, the Court of Appeal acknowledged that past authorities referred to "single contract" scenarios and "two-contract" scenarios and seemed to apply different rules for incorporating arbitration agreements. In a "single contract" scenario, it was established law that general words of incorporation were sufficient to incorporate arbitration agreements. This is because in a single contract scenario an arbitration agreement is not considered an onerous term (which would therefore require specific words of incorporation in order fairly to draw a party's attention to it. Click [here](#) to read our article on the authority on this point to which the Court of Appeal referred, *Paul Stretford v*

*The Football Association Ltd & Another* [2007] EWCA Civ 238)). Conversely, in a "two contract" scenario, it was established law that specific words of incorporation are required to incorporate an arbitration agreement.

## **The new formulation of the rules for multiple contracts**

Although the Court of Appeal acknowledged that in some scenarios general words of incorporation are sufficient to incorporate an arbitration agreement, whereas in others specific words are required, the court considered that the distinction of previous authorities between "single contract" scenarios and "two contract" scenarios as a means of ascertaining the relevant rule was misleading and unhelpful.

The Court of Appeal in *Habas Sinai v Sometal*, stated that in seeking to establish the applicable rules for the incorporation of an arbitration agreement, what is in fact determinative is not the number of contracts in the factual matrix, but whether the previous contract from which incorporation of the arbitration agreement is sought, was between (a) the same parties as the contract to which incorporation is sought or was between (b) only one of the parties and a third party or indeed different parties altogether. In the former category, general words of incorporation suffice, whereas in the latter category, only specific words will do.

In the case in hand, although there was more than one contract to be considered (and might therefore formerly have been classified as a "two contract" scenario requiring specific words of incorporation), the fact that all the contracts were between the same parties meant that general words of incorporation were sufficient.

## **On the facts, were the words of incorporation effective?**

Having held that there was no bar in principle to general words of incorporation successfully incorporating an arbitration agreement from a previous contract between the same parties, the Court of Appeal had to consider whether the words "all the rest will be the same as our previous contracts" were in fact capable of incorporating the arbitration agreement. The court held that those words and their context meant that they were sufficiently clear to be capable of referring to the specific previous contract which contained the London arbitration agreement. The application of the arbitration clause into Contract 15 did not require any linguistic manipulation and there was no good reason to treat the words "all the rest" as having meant all of the rest of the terms except the arbitration clause.

## **Comment**

Although the claimant's commencement of arbitration was confirmed as justified and supported by a validly incorporated arbitration agreement, such confirmation was not achieved until the parties had expended costs on an interim final hearing on jurisdiction, an application to the High Court under section 67 of the Arbitration Act 1996 and an appeal of the High court's decision to the Court of Appeal. Although the Court of Appeal has provided clarification of the position as to the rules which apply for the incorporation of arbitration agreements regarding multiple contracts between the same parties and has helpfully reformulated the test, it remains the case that the express inclusion of an arbitration agreement into each and every contract to which the parties wish it to apply is preferable in order to avoid uncertainty and the risk of disputes over jurisdiction.

## The relevance of merit in a challenge to an award on the grounds of serious irregularity under section 68(2) (d) of the Arbitration Act 1996

It is a guiding principle of arbitration that each party must have a reasonable opportunity to put forward its case to the tribunal and to deal with that of its opponent. The corollary of that principle is the tribunal's duty to consider issues put forward by the parties. Under section 68(2)(d) of the Arbitration Act 1996 a party can challenge an award for serious irregularity where it can be shown that the tribunal failed to deal with all of the issues that were put to it and which the court considers has caused or will cause substantial injustice to the applicant. Although reference is made to a failure by the tribunal to deal with all of the issues that were put to it, the onus on the tribunal is in fact (only) to deal with those essential issues which were put to the tribunal and which were necessary to be dealt with for a fair decision on the principal issues relating to the claim(s) or the specific defence(s) raised in the course of a reference<sup>2</sup>.

In *Buyuk Camlica Shipping Trading & Industry Corporation Inc v Progress Bulk Carriers Ltd* [2010] EWHC 442 (Comm) the court had to address, in the context of a challenge to an award for serious irregularity under section 68(2)(d), the relevance of the merit of an issue raised by a party. The question for the court was whether the fact that an issue raised by a party is of no or little merit has any bearing on the tribunal's duty to consider all the issues that were put to it. In other words, does the fact that an issue raised by a party is of no or little merit diminish the tribunal's duty or absolve the tribunal of its duty to consider the issues raised by the parties?

### Facts

Under two consecutive charterparties, the claimant owners chartered their vessel to the defendant charterers. Both charterparties contained a clause which prohibited the loading and carriage of Direct Reduced Iron ("DRI") in any form. The defendant asserted the existence of oral agreements varying the charterparties so as to allow the carriage of DRI, and in reliance on that contention ordered the vessel to specific ports for the loading of DRI. The claimant's refusal to allow the vessel to go to the ports to load DRI meant that the defendant was unable to perform sub-charters into which it had entered, therefore causing loss to it for which it commenced arbitration.

In defending the claims brought in the arbitration, the claimant (that is, the claimant in the subsequent court proceedings under section 68 of the Arbitration Act 1996 but the respondent in the arbitration) justified its refusal to send the vessel to the ports to load DRI by (a) denying that oral agreements had been made which varied the charterparties so as to allow for the carriage of DRI, and in the alternative that (b) even if the charterparty had been so varied, the vessel could not in fact had entered the relevant ports because the vessel's actual moulded depth would have made this impossible or unsafe; the actual moulded depth was greater than the moulded depth which the claimant had stated in the charterparty; but the defendant knew of the claimant's misdescription and had waived the breach. Having waived the breach, the claimant argued, the defendant was now estopped from relying on it.

The tribunal found that there were legally binding oral agreements which had varied the charterparties and allowed for the carriage of DRI; the claimant's refusal to perform the voyages plus the misdescription rendering performance physically impossible, when combined, entitled the defendant to damages.

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<sup>2</sup> *World Trade Corporation v Czarnikow Sugar Ltd* [2005] 1 Lloyd's Rep. 422.

The claimant challenged the award for serious irregularity under section 68(2)(d) of the Arbitration Act 1996 on the grounds that the tribunal did not deal with all of the essential issues put to it by the parties, in particular the claimant's submission that the defendant had waived the claimant's breach in respect of the misdescription of the vessel's moulded depth.

### **Relevance of merit of an issue to establishing a serious irregularity**

The court found that the waiver argument had been raised but not developed by the claimant in any substantive way and was devoid of merit.

The court acknowledged that, in practice, faced with an issue which is utterly devoid of merit, a tribunal might be tempted to dismiss that issue without referring to it in its award. However, given the tribunal's duty to deal with all of the essential issues which were put to it and which were necessary to be dealt with for a fair decision on the principal issue(s) relating to the claim(s) or the specific defence(s), and given the grounds for challenging the award for a tribunal's failure to do so, it is imperative that a tribunal refer to all of the issues which it has considered, however briefly, and regardless of their merit. There should be some form of communication, normally in the form of a decision, by a tribunal to the parties from which the latter can ascertain whether or not an essential issue has been dealt with. It should not be left to the parties, or the task of the court, to engage in speculation as to whether the tribunal did or did not consider and deal with an issue. The presence or absence of merit of an issue raised by a party cannot resolve the question of whether or not the issue was dealt with by the tribunal. Therefore, the merit of an issue raised by a party is of no relevance to the question of whether a serious irregularity has occurred.

### **Relevance of merit of an issue to establishing substantial injustice**

The presence or absence of merit, however, is relevant to the second limb of the test under section 68(2)(d) of the 1996 Act, that is whether a substantial injustice has been or will be done to the applicant. In determining whether there has been substantial injustice, it is sufficient for it to be shown that, if the issue had been dealt with, the tribunal might well have reached a different view in favour of the applicant. In relation to an unmeritorious argument, a tribunal's failure to consider that argument will not have caused the tribunal to have reached a result which differs from the result which it did in fact reach. Therefore, the merit of an argument is of significant relevance to the question of whether a tribunal's failure to deal with it has caused or will cause substantial injustice to the applicant.

### **Comment**

At the recent arbitration conference of the British Institute of International and Comparative Law<sup>3</sup> on whether the Arbitration Act 1996 needs reviewing by Parliament, Sir Peter Cresswell expressed the view that the Commercial Court has great judges who tread a careful line between, on the one hand understanding and respecting arbitrators' autonomy and, on the other hand, intervening when, for example, it is not clear whether the tribunal has dealt with the essential issues put forward by the parties and which are necessary for the tribunal fairly to come to its decision on the principal issue of the dispute. In *Buyuk Camlica Shipping Trading & Industry Corporation Inc v Progress Bulk Carriers Ltd*, the court seems to have navigated this path sensibly.

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<sup>3</sup> 8 February 2010.



## Three jurisdictions seek to raise their profile in the arbitration world

### **Bahrain Arbitration Centre**

The government of Bahrain and the American Arbitration Association have opened an arbitration centre in Bahrain, the Bahrain Chamber of Dispute Resolution ("BCDR-AAA"). Legislation has been passed which automatically refers to arbitration under the auspices of the BCDR-AAA, all cases worth US\$1.3 million or more involving an international party or party licensed by the Central Bank of Bahrain and which otherwise would have fallen within the jurisdiction of the national courts of Bahrain. In addition, a freezone has been declared with the intention of prohibiting challenges to an award of the BCDR-AAA in the national courts of Bahrain where the parties have chosen a foreign law.

### **Cyprus International Arbitration Centre**

A new arbitration service has been launched by the Cyprus International Arbitration Centre ("CIAC"). Arbitrations administered by CIAC will be determined under either CIAC's Domestic Arbitration Rules or the UNCITRAL Rules.

### **Singapore – becoming Asia's leading arbitration centre**

Singapore's growth and rise in status as an arbitration hub in Asia has continued. There has been an increase in the number of parties whose arbitration agreements stipulate Singapore as the seat of the arbitration, alongside English law as the governing law of the main contract. The number of international arbitrations administered by SIAC has doubled since 2000 and the ICC (which has a presence in Singapore), for example, ranks Singapore as the top city in Asia for ICC arbitrations.

Steven Baker, a Partner in our International Arbitration Group, attended the launch of Maxwell Chambers, the Singaporean government funded arbitration centre, as part of the delegation of 20 Essex Street Chambers at the beginning of the year. 20 Essex Street, at the invitation of the Singaporean Ministry of Law, has established tenanted chambers within Maxwell Chambers.

## ICCA elects new president

The International Council for Commercial Arbitration has elected Jan Paulsson as its next President.

## IBA Guidelines for Drafting International Arbitration Clauses

The International Bar Association's Arbitration Committee has published the final draft of its Guidelines for Drafting International Arbitration Clauses. The Guidelines explain in simple terms the essential issues to which parties should have regard when drafting their arbitration agreement, including the implications of opting for institutional or ad hoc arbitration, the need to define the scope of the arbitration agreement, the significance of the seat of the arbitration. They also set out suggested wording and some optional elements to consider, such as express confidentiality provisions. The Guidelines can be found on the [IBA's website](#) and comments are invited by 1 June 2010.

## News from the Olswang International Arbitration Group

### Publications

Richard Bamforth, Head of International Arbitration, and Katerina Maidment, Professional Support Lawyer to the Olswang International Arbitration Group, had an article published in the International Bar Association's Arbitration Newsletter on the erosion of the finality of awards. The article analyses the English court's decision in *CNH Global N.V. v PGN Logistics Limited & Ors* [2009] EWHC 977 Comm highlighting the circumstances in which substantive amendments to an award may be allowed by the English court, and considers its effect in eroding the principle of finality of arbitral awards.

Associate Ned Beale's article "Summary Arbitration Proceedings: A Comparison between the English and Dutch Regimes" (written jointly with Lisa Bench Nieuwveld and Matthijs Nieuwveld of NautaDutilh, Rotterdam) was published in Issue 1, 2010 of *Arbitration International* (the LCIA Journal, General Editor, Professor William W Park).

### AIJA Annual Arbitration Conference

The AIJA Annual Arbitration Conference will take place this year on 18 and 19 June. It will consist of presentations and workshops and cover a range of topics including insolvency and arbitration, the evaluation of damages and ethical issues in arbitration. Olswang's Ned Beale is moderating the workshop on Challenging Arbitral Awards and is a member of the organising committee for the conference.

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# About Olswang

Olswang is a leading business law firm with a distinctive approach. Our pioneering and problem-solving ethos has established a commanding reputation in the technology, media and real estate sectors, as well as a wide range of other industries.

Founded in 1981, our Firm has grown to a team of over 650, including more than 100 partners, across four European offices. In addition, Olswang has a long-established best friends' network of leading independent law firms throughout the world.

Our Firm continues to be acknowledged as a leading practice in many of our core areas: Olswang was voted TMT Team of the Year 2009 for the second year running at the annual Legal Business Awards; Olswang's Corporate Group won M&A Law Firm of the Year at the M&A Awards 2008 in conjunction with M&A Magazine, and was named Corporate Team of the Year – Mid markets at The Lawyer Awards 2008.

Resourceful drive and a climate of shared knowledge and empowerment are the hallmarks of our meritocratic, unstuffy culture. For the last five years Olswang has been ranked in The Sunday Times 100 Best Companies to Work For and our strong management team is dedicated to the personal and professional development of our people.

Olswang is committed to being a responsible business and has developed Corporate Responsibility programmes that allow us to actively manage the social and economical impact of the Firm's activities. For example, through our Green initiative we recycle almost 90% of our waste and on the 1 May 2009 Olswang achieved CarbonNeutral® accreditation. As part of our Corporate Responsibility strategy we also encourage every member of staff to engage in lasting and meaningful pro bono and volunteering activities, both legal and non legal.

We recruit personalities with a genuine fascination and notable reputation in the sectors they focus on, which is reflected in the quality of our advice. We also understand the importance of achieving our clients' goals and ensure that our advice is, above all else, practical.

From world-class businesses to entrepreneurial startups, the rich diversity of our client base ensures a broader perspective and, as a result, deeper commercial insight. Transactional work is the most obvious feature of the role we perform. However, ongoing non-transactional support is an integral part of our business, and we focus on creating long-term relationships with our clients. We employ a range of proactive initiatives such as client care programmes, secondments, client training and feedback sessions to ensure our client relationships are strong.

At Olswang the passion of our lawyers, the confidence of our approach and the commercial edge to our advice provide a unique and compelling service.

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