

# ANNUAL ARBITRATION CONFERENCE

## ENFORCEMENT – MAKING THE AWARD WORTH THE PAPER IT'S WRITTEN ON

**Wednesday 25 November**

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

Chaired by Lord Bingham of Cornhill and Audley Sheppard, Clifford Chance

### FEATURING EXPERT ADDRESSES FROM:

- ◆ David Roney, Schellenberg Wittmer
- ◆ Guy Pendell, CMS Cameron McKenna
- ◆ Andrew Foyle, One Essex Court
- ◆ Hilary Heilbron QC, Brick Court Chambers
- ◆ His Hon Sir Anthony Colman, Essex Court Chambers
- ◆ Ivan Marisin, Clifford Chance
- ◆ Domitille Baizeau, Lalive
- ◆ John Beechey, ICC International Court of Arbitration
- ◆ Renaud Sorieul, UNCITRAL
- ◆ Professor Loukas Mistelis, Queen Mary, University of London
- ◆ Dr Domenico Di Pietro, Chiomenti Studio Legale
- ◆ Carole Malinvaud, Gide Loyrette Nouel

### COVERING:

- ◆ ICC Guide to National Rules of Procedure for Recognition and Enforcement of New York Convention Awards
- ◆ Making an award enforceable - the arbitrator's perspective
- ◆ Judicial support for enforcement of awards in England, Russia, and Switzerland
- ◆ The role of institutions in facilitating and achieving enforcement
- ◆ Promoting enforcement: UNCITRAL's perspective
- ◆ Reform of the New York Convention
- ◆ New York Convention v ICSID Annulment
- ◆ Does ICC Article 28.6 constitute a waiver of state immunity?

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# ANNUAL ARBITRATION CONFERENCE 2009

## 8.45 REGISTRATION AND COFFEE

## 9.15 WELCOME AND OPENING REMARKS

AUDLEY SHEPPARD, CLIFFORD CHANCE

## MORNING SESSION

CHAIRER BY LORD BINGHAM OF CORNHILL

## 9.20 CHAIRMAN'S OPENING REMARKS

## 9.30 ICC REPORT ON THE NEW YORK CONVENTION – A VALUABLE NEW RESOURCE FOR PRACTITIONERS AND USERS

DAVID RONEY, SCHELLENBERG WITTMER  
GUY PENDELL, CMS CAMERON MCKENNA  
ANDREW FOYLE, ONE ESSEX COURT

- ◆ WHAT LIMITATION PERIODS APPLY TO ENFORCEMENT OF ARBITRAL AWARDS?
- ◆ WHAT EVIDENCE IS REQUIRED TO OBTAIN ENFORCEMENT?
- ◆ ARE ENFORCEMENT PROCEEDINGS CONFIDENTIAL?
- ◆ CAN AWARDS SET ASIDE AT THE PLACE OF ARBITRATION BE ENFORCED?

## 10.40 HOW TO MAKE AN AWARD ENFORCEABLE? THE ARBITRATOR'S PERSPECTIVE

HILARY HEILBRON QC, BRICK COURT CHAMBERS

HILARY HEILBRON WILL DISCUSS THE TRAPS AN ARBITRATOR SHOULD AVOID AND THE PRECAUTIONS HE OR SHE SHOULD TAKE TO ENSURE THAT AN AWARD IS NOT REFUSED RECOGNITION AND ENFORCEMENT UNDER ARTICLE V OF THE NEW YORK CONVENTION.

## 11.10 MORNING COFFEE

## 11.40 JUDICIAL SUPPORT FOR ENFORCEMENT OF AWARDS

HIS HON SIR ANTHONY COLMAN, ESSEX COURT CHAMBERS

HIS HON SIR ANTHONY COLMAN WILL DISCUSS THE APPROACH OF ENGLISH COURTS TO ENFORCEMENT, INCLUDING ISSUES SUCH AS LEAVE TO APPEAL AGAINST AN AWARD, JURISDICTION OF THE TRIBUNAL, AND THE DEGREE OF INVESTIGATION ON ENFORCEMENT IF THE AWARD IS ALREADY CHALLENGED IN THE PLACE OF ARBITRATION.

## 12.10 A PRACTITIONER'S PERSPECTIVE ON JUDICIAL SUPPORT

### RUSSIA

IVAN MARISIN, CLIFFORD CHANCE

- ◆ LEGAL FRAMEWORK
- ◆ MAJOR TRENDS AND OBSTACLES
- ◆ CASE STUDY

## SWITZERLAND

DOMITILLE BAIZEAU, LALIVE

## 13.00 LUNCH

## AFTERNOON SESSION

CHAIRER BY AUDLEY SHEPPARD, CLIFFORD CHANCE

## 14.10 CHAIRMAN'S OPENING REMARKS

## 14.20 THE ROLE OF INSTITUTIONS IN FACILITATING AND ACHIEVING ENFORCEMENT

JOHN BEECHEY, ICC INTERNATIONAL COURT OF ARBITRATION

## 14.50 PROMOTING ENFORCEMENT: UNCITRAL'S PERSPECTIVE

RENAUD SORIEUL, UNCITRAL

## 15.20 THE FUTURE OF ENFORCEMENT AND POSSIBLE REFORM OF THE NEW YORK CONVENTION

PROFESSOR LOUKAS MISTELIS, QUEEN MARY, UNIVERSITY OF LONDON

PROFESSOR LOUKAS MISTELIS WILL REVIEW THE FINDINGS OF THE QUEEN MARY SCHOOL OF INTERNATIONAL ARBITRATION'S MOST RECENT STUDY ON ENFORCEMENT, INCLUDING ENFORCEMENT OF AWARDS INVOLVING STATES AND PROPOSALS FOR REFORM OF THE NEW YORK CONVENTION.

## 15.50 AFTERNOON TEA

## 16.15 NEW YORK CONVENTION / ICSID ANNULMENT: WHICH IS BETTER?

DR DOMENICO DI PIETRO, CHIOMENTI STUDIO LEGALE

- ◆ COMPARATIVE INTRODUCTORY REMARKS ON THE TWO "SYSTEMS"
- ◆ SCOPE OF REVIEW: ARTICLE V OF THE NEW YORK CONVENTION VS ARTICLE 52 OF THE ICSID CONVENTION
- ◆ COMPARATIVE PROCEDURAL ISSUES AND ILLUSTRATIVE CASE LAW
- ◆ STRATEGIES AND POINTS OF ASSESSMENT

## 16.45 DOES ICC ARTICLE 28.6 CONSTITUTE A WAIVER OF STATE IMMUNITY?

CAROLE MALINVAUD, GIDE LOYRETTE NOUËL

- ◆ THE SCOPE AND LIMITS OF STATE IMMUNITY WHEN SEEKING THE ENFORCEMENT OF AN AWARD - BRIEF OVERVIEW
- ◆ ICC ARTICLE 28.6 AS AN IMPLIED WAIVER OF IMMUNITY IN FRENCH CASE LAW
- ◆ IMPLIED WAIVERS OF IMMUNITY UNDER OTHER DOMESTIC LAWS OR ARBITRATION RULES

## 17.15 FINAL Q&A FOLLOWED BY CLOSING REMARKS

AUDLEY SHEPPARD, CLIFFORD CHANCE

## 17.30 RECEPTION

Lord Bingham was Senior Law Lord of the United Kingdom from 2000 to 2008. He was formerly Lord Chief Justice of England and Wales from 1996 to 2000 and Master of the Rolls between 1992 and 1996. He became a High Court judge in 1980 and sat in the Commercial Court. He was called to the Bar in 1959. He became a Life Peer in 1996, and in 2005 he was created a Knight of the Garter by the Queen.

Audley Sheppard is Global Head of Clifford Chance's International Arbitration Group. He specialises in the resolution of major disputes arising out of infrastructure and energy projects, and international trade and investment. He also sits as an arbitrator. Audley is the New Zealand member of the ICC International Court of Arbitration and a visiting professor at the School of International Arbitration, Queen Mary, London. Active in the IBA arbitration committee (Co-Chair, 2006-07) and the ILA arbitration committee (Rapporteur, 1996-2006), Audley writes and speaks regularly on arbitration topics.

David Roney is a partner in Schellenberg Wittmer's International Arbitration Group, Geneva. He has acted as counsel before international arbitral tribunals in a broad range of international commercial disputes. He has also served on a number of occasions as arbitrator under ICC Rules and the Swiss Rules of International Arbitration. David is a co-founder and Executive Committee Member of the Foundation for International Arbitration Advocacy, and a Co-Chair of the ICC Task Force on the New York Convention.

Guy Pendell is a solicitor advocate and a partner at CMS Cameron McKenna. He specialises in international disputes in the corporate and financial sectors. Guy has acted in many arbitrations and related litigation, and is the UK rapporteur to the ICC Task Force on the New York Convention. He is a co-author of the CMS Guide to Arbitration and author of the English chapter of the forthcoming World Arbitration Reporter. He is the Chair of the CMS Dispute Resolution Practice Area Group and former Chair of the CMS International Arbitration Group. Guy also sits as an arbitrator.

Andrew Foyle is a member of One Essex Court, specialising in international arbitration. Prior to joining the chambers, he was head of Lovells' international arbitration practice from 1998 to 2006. He has been a member of the International Court of Arbitration of the International Chamber of Commerce since 2006. He is the Chair of the IBA Arbitration Committee's Subcommittee on the Recognition and Enforcement of Arbitral Awards. Andrew is also Editor of Dispute Resolution International, a journal published by the IBA.

Hilary Heilbron QC has been in practice for over 30 years and Queen's Counsel for 20. She has appeared as an advocate in court cases for a wide range of national and international commercial clients, including as leading counsel in the House of Lords and Privy Council. She has also appeared as counsel in a large number of international arbitrations and regularly sits as an international arbitrator in substantial disputes.

John Beechey is Chairman of the ICC International Court of Arbitration and commenced his term in January 2009. He was previously a partner at Clifford Chance, where he was Head of International Arbitration. He has vast experience of all major arbitral institutions and has represented parties or held arbitral appointments in over 100 international arbitrations. John also served as a Member of the Council of ICC World Business Institute for 10 years.

His Hon Sir Anthony Colman is an arbitrator based at Essex Court Chambers. He practised as a barrister of Gray's Inn at the Commercial Bar between 1962 and 1992, specialising in primary insurance and reinsurance maritime disputes, banking and international trade and distributorship agreements, and ICC and ICSID arbitrations. He was a Judge of the Commercial Court, in the High Court, London from 1992 to 2007, specialising in commercial litigation. He was also a judge in Charge of the Commercial Court from 1996 to 1997.

Ivan Marisin is a senior partner at Clifford Chance, Russia. He has represented clients in more than 100 major litigations and arbitrations. Ivan is an arbitrator at the ICAC, International Arbitral Centre in Vienna and other centres. He speaks fluent German and English.

Domitille Baizeau is a Partner at Lalive, Geneva. She has acted as counsel and arbitrator in numerous arbitration proceedings, ad hoc and under the rules of the ICC, LCIA and ICDR, and under the Swiss Rules. Domitille trained in New Zealand and is a member of the Law Society of England & Wales. She is co-chair of the Swiss Arbitration Association below 40 and former co-chair of the LCIA Young International Arbitration Group. Domitille is on the ICC New Zealand International Arbitration Committee.

Renaud Sorieul is the Director of the International Trade Law Division of the United Nations Office of Legal Affairs, which functions as the substantive secretariat for the United Nations Commission on International Trade Law (UNCITRAL). Renaud joined the UNCITRAL secretariat in 1989, and took up his duties on 1 October 2008. Prior to this, Renaud served as Head of the Legal Office of the Directorate-General of Energy and Mines, at the Ministry of Industry (1987-1989). He was previously a member of the International Criminal Law Division at the Ministry of Justice (1985-1987).

Professor Loukas Mistelis is the Clive Schmitthoff Professor of Transnational Commercial Law and Arbitration at the Centre for Commercial Law Studies, Queen Mary, University of London. He is the Secretary of the Advisory Council of the UN Convention on Contract for the International Sale of Goods and the coordinator of the Queen Mary Case Translation Programme. Loukas consults and arbitrates in respect of international commercial and investment disputes, secured transactions and complex contractual matters.

Dr Domenico Di Pietro is a member of the International Law and Arbitration Group at Chiomenti Studio Legale, Rome. Qualified to practise both in Italy, and England and Wales, Domenico has advised on and participated in numerous ICSID and ad hoc arbitrations as sole and party-appointed arbitrator. He lectures on international arbitration at Roma Tre University and is in charge of teaching activities on International Commercial and Investment Arbitration at the post-graduate program of Sapienza University of Rome. Domenico is Co-Chairman of the Italian Forum for Arbitration and ADR, and a Freeman of the Worshipful Company of Arbitrators, Corporation of London.

Carole Malinvaud is a partner in the Arbitration Department at Gide Loyrette Nouel, Paris. She specialises in arbitration, international contracts, and international and comparative law. She has acted as counsel and arbitrator in several UNCITRAL proceedings as well as in institutional arbitration proceedings including ICC, ICSID, the Milan Chamber of Arbitration and the AFA. Carole is a member of the Institute of International Arbitration, the French Committee of Arbitration, the IBA, the AAA and the Institute for Transnational Arbitrage. She is also a member ICC France's Commission on International Arbitration and the Latin-American group of ICC.

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