

# NEW CHALLENGES FOR USERS OF INTERNATIONAL COMMERCIAL ARBITRATION

**Thursday 6 November 2008**

**Freshfields Bruckhaus Deringer, 65 Fleet Street, London EC4Y 1HS**

**Co-Chaired by Michael Lee and Constantine Partasides**

## FEATURING EXPERT ADDRESSES FROM:

- ◆ Simon Nesbitt, Lovells
- ◆ Peter Leaver QC, One Essex Court
- ◆ Anne Marie Whitesell, Dechert
- ◆ Professor John Gotanda, Villanova University
- ◆ Eric A Schwartz, Dewey & LeBoeuf
- ◆ Dr Julian Lew QC, 20 Essex Street
- ◆ Professor Dr Peter Schlosser, University of Munich
- ◆ V V Veeder QC, Essex Court Chambers
- ◆ Dharmendra Rautray, Kachwaha & Partners
- ◆ Dushyant Dave, Senior Advocate
- ◆ Peter Yuen, Partner, Freshfields
- ◆ James Morrison, ICC International Court of Arbitration

## COVERING:

- ◆ State of the Art Arbitration Clauses
- ◆ Independence, Impartiality & Challenges of Arbitrators
- ◆ Trends in the Award of Damages in International Arbitration
- ◆ 10 Years on – How Might the ICC Rules be Updated?
- ◆ Rising to the Challenge: The Future of the ICC International Court of Arbitration
- ◆ Europe – Is it Time to Reconsider the Arbitration Exception from the Brussels Regulation?
- ◆ India and *Satyam Computers*: Approach with Caution or a Manageable Blip?
- ◆ Asian Dragons: Recent Developments in the Asia Pacific

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# NEW CHALLENGES FOR USERS OF INTERNATIONAL COMMERCIAL ARBITRATION

8.30 REGISTRATION AND COFFEE

9.00 OPENING REMARKS – CONSTANTINE PARTASIDES, FRESHFIELDS

SESSION ONE – CHAIRED BY CONSTANTINE PARTASIDES

9.10 STATE OF THE ART ARBITRATION CLAUSES

SIMON NESBITT, PARTNER, LOVELLS

HOW DOES ONE DRAFT AN ENFORCEABLE SOLE OPTION OR SPLIT CLAUSE WITH REQUISITE CLARITY ACROSS JURISDICTIONS? HOW SHOULD AN ENFORCEABLE MULTI-TIERED ARBITRATION CLAUSE WHICH DETAILS THE TIMING AND OPERATION OF THE PROCEDURES IN EACH TIER WITH PRECISION BE DESIGNED?

9.45 INDEPENDENCE, IMPARTIALITY & CHALLENGES OF ARBITRATORS

ANNE MARIE WHITESSELL, DECHERT

PETER LEAVER QC, ONE ESSEX COURT

HAVE CHALLENGES TO ARBITRATORS BECOME MERELY ANOTHER TACTICAL EXERCISE? THE DRAMATIC INCREASE IN NUMBER AND SCOPE OF ARBITRATIONS HAS BEEN ACCOMPANIED BY INCREASING CHALLENGES TO ARBITRATORS ON THE GROUNDS OF IMPARTIALITY OR INDEPENDENCE. ARE THE RELEVANT STANDARDS GOVERNING THE ASSESSMENT OF INDEPENDENCE AND IMPARTIALITY OF ARBITRATORS EFFECTIVE? IS THERE A NEED FOR REASONED PUBLISHED DECISIONS ON CHALLENGE DETERMINATIONS FROM ARBITRAL INSTITUTIONS?

10.45 MORNING COFFEE

SESSION TWO – CHAIRED BY MICHAEL LEE, 20 ESSEX STREET

11.15 TRENDS IN THE AWARD OF DAMAGES IN INTERNATIONAL ARBITRATION

THE HONORABLE MARC LALONDE PC OC QC

IS THERE A GROWING TREND TOWARDS MORE SIGNIFICANT RECOVERY FOR CLAIMANTS? IN PRACTICE, IS THERE A CONSIDERABLE DIFFERENCE BETWEEN THE AVERAGE AMOUNTS CLAIMED AND THE AVERAGE AMOUNTS RECOVERED? WHAT IS THE ARBITRATOR'S APPROACH WHERE THE CLAIMANT IS UNABLE TO QUANTIFY THE DAMAGE, AND WHAT FACTORS ARE TAKEN INTO CONSIDERATION WHEN DECIDING HOW TO DEAL WITH THIS ISSUE? ARE THERE ANY DISCERNIBLE PATTERNS IN THE AWARDED COSTS OR INTEREST BY TRIBUNALS?

11.50 10 YEARS ON – HOW MIGHT THE ICC RULES BE UPDATED?

ERIC A SCHWARTZ, DEWEY & LEBOEUF

AS ICC CONSIDERS A REVIEW OF THE ICC RULES OF ARBITRATION, WHAT ASPECTS OF THE RULES REQUIRE CHANGE OR NEED TO BE UPDATED? HOW COULD THEY BE ADAPTED TO PROVIDE MORE EFFECTIVELY FOR THE ADMINISTRATION OF COMPLEX MULTI-PARTY DISPUTES? SHOULD THE RULES INCLUDE SPECIFIC DETAILS ON A "SUMMARY JUDGMENT" PROCEDURE? HOW CAN THE EFFECTIVENESS AND EFFICIENCY OF THE ICC ARBITRAL PROCESS BE MAINTAINED?

12.25 RISING TO THE CHALLENGE: THE FUTURE OF THE ICC INTERNATIONAL COURT OF ARBITRATION

DR JULIAN LEW QC, 20 ESSEX STREET

THE GROWING COMPLEXITY AND SOPHISTICATION OF ARBITRATION AND ITS USERS HAS RESULTED IN A FLOURISHING AND COMPETITIVE MARKET. WHAT CHALLENGES AND OPPORTUNITIES FACE INSTITUTIONS SUCH AS ICC?

12.55 LUNCH

SESSION THREE: CHAIRED BY MICHAEL LEE

14.00 EUROPE – IS IT TIME TO RECONSIDER THE ARBITRATION EXCEPTION?

PROFESSOR DR PETER SCHLOSSER, UNIVERSITY OF MUNICH V V VEEDER QC, ESSEX COURT CHAMBERS

THE SEPTEMBER 2007 "REPORT ON THE APPLICATION OF REGULATION BRUSSELS I IN THE MEMBER STATES (HEIDELBERG-REPORT)" CONCLUDED THAT THERE WERE CERTAIN PROBLEMS WITH THE ARBITRATION EXCEPTION WHICH SHOULD BE REMEDIED BY AMENDMENTS TO THE BRUSSELS REGULATION. HAS THE REPORT OVERSTATED THE PROBLEMS WITH THE ARBITRATION EXCEPTION, GIVEN ITS NEAR UNANIMOUS SUPPORT BY MEMBER STATES? WILL AMENDMENTS TO THE BRUSSELS REGULATION UNDERMINE OR IMPAIR THE EFFICIENT AND PROPER FUNCTIONING OF THE NEW YORK CONVENTION?

15.00 INDIA: APPROACH WITH CAUTION OR A MANAGEABLE BLIP?

DHARMENDRA RAUTRAY, KACHWAHA & PARTNERS  
DUSHYANT DAVE, SENIOR ADVOCATE

CAN THE IMPACT OF INDIA'S SUPREME COURT IN *VENTURE GLOBAL ENGINEERING V. SATYAM COMPUTER SERVICES* BE LIMITED DUE TO THE UNUSUAL GOVERNING LAW CLAUSE IN THE CASE, OR WILL IT HAVE LASTING DELETERIOUS CONSEQUENCES ON INDIA-RELATED ARBITRATIONS GENERALLY? IS THE BEST SOLUTION TO DRAFT INDIA-RELATED ARBITRATION AGREEMENTS EXPRESSLY EXCLUDING THE APPLICATION OF PART I OF THE 1996 INDIAN ARBITRATION AND CONCILIATION ACT?

16.00 AFTERNOON TEA

SESSION FOUR – CHAIRED BY CONSTANTINE PARTASIDES

16.30 ASIAN DRAGONS: RECENT DEVELOPMENTS IN THE ASIA PACIFIC

PETER YUEN, FRESHFIELDS

JAMES MORRISON, ICC INTERNATIONAL COURT OF ARBITRATION  
AN ASSESSMENT OF THE GROWING VOLUME OF INTERNATIONAL ARBITRATION CASES HANDLED IN MAINLAND CHINA AND HONG KONG, ALONG WITH AN EXAMINATION OF PROPOSED ARBITRATION LAW AND PRACTICE REFORMS. ALSO, A LOOK AT THE GROWTH OF ARBITRATION IN THE REST OF THE ASIA-PACIFIC REGION.

17.30 CLOSING SUMMARY BY CONSTANTINE PARTASIDES – FOLLOWED BY RECEPTION

Constantine Partasides is a partner and the head of Freshfields' international arbitration group in London. He has acted as counsel and arbitrator in approximately fifty ad hoc and institutional arbitrations, including under the rules of ICC, LCIA, AAA and ICSID. In recent years, Constantine has specialised in arbitrations in the energy sector arising under contracts and investment treaties. He is a co-author of the 4th edition of Sweet & Maxwell's *The law and practice of international arbitration*, and the news editor of the journal *International Arbitration Law Review*.

Simon Nesbitt is a partner in Lovells' international arbitration group. He is admitted as a solicitor in England and an avocat in France, and is a Fellow of the Chartered Institute of Arbitrators. A solicitor-advocate, he has acted as counsel in numerous international arbitrations under all of the major institutional rules, as well as many ad hoc arbitrations, for clients from a wide range of industries, in particular the energy, financial services, food and beverage, pharmaceutical and commodities sectors. He has particular experience of disputes in South-East Asia.

Before joining Dechert, Anne Marie Whitesell was Secretary General of the ICC International Court of Arbitration from 2001 to 2007 where she supervised approximately 1,100 international arbitration cases each year involving parties from over 120 countries. She also worked closely with the 126 members of the International Court of Arbitration, who hail from 88 different countries, and contributed to the institution's profile and reputation around the world. She has practised with law firms in both the US and France and was a lecturer at the Université de Paris I, Panthéon-Sorbonne and the Institut de Droit Comparé (Université de Paris II).

Peter Leaver QC is an experienced international commercial arbitrator. He is a member of the Chartered Institute of Arbitrators (MCIArb) and appointed to The Law Society's Accreditation Panel of Arbitrators. Through his extensive practice at the Bar, Peter is experienced in

banking, insurance and financial services cases, and related jurisdictional questions. He has vast experience in institutional and ad hoc arbitrations acting as counsel and arbitrator.

Michael Lee is a specialist arbitrator and practising barrister. Before joining the English Bar he was a solicitor and a partner in a major international law firm, Norton Rose, where he managed the Paris office and the firm's international arbitration group. He has a wide ranging practice as an international arbitrator having served as a member of the tribunal in over 40 international arbitrations administered under the rules of various international arbitration institutions. Michael is a Fellow of the Chartered Institute of Arbitrators and a CEDR accredited mediator.

John Gotanda is Professor of Law, Associate Dean for Research and Director of the J.D./M.B.A. program at Villanova University School of Law. His scholarly interests focus on damages in international law and international commercial arbitration and John has spoken widely on the subject of damages in international law. John has served as an expert on damages for the U.S. Department of Justice, the U.S. State Department, and the Office of the U.S. Trade Representative.

Eric A Schwartz is co-chair of Dewey & LeBoeuf's International Arbitration Group. He is a leading, Paris-based international arbitration practitioner and former Secretary General of the ICC International Court of Arbitration. Over the last 30 years, he has acted on behalf of some of the world's largest companies, public authorities and sovereign states in international arbitration proceedings in all of the principal European arbitration venues, as well as in Asia and the US. Eric has particular experience in relation to disputes arising out of major infrastructure projects, as well as in the oil and gas, telecommunications and information industries as counsel and as arbitrator.

Dr Julian Lew QC is a member of 20 Essex Street, London. He is Professor and Head of the School of International Arbitration, Centre for Commercial Law Studies, Queen Mary, University of London. Julian is the British member of the ICC International Court of Arbitration and author of various publications including *Comparative International Commercial Arbitration* (2003, with Mistelis and Kroll).

Professor Dr Peter Schlosser is Holder (emeritus) of the Chair of German, International and Foreign Civil Procedure and of General Civil Law at the Law School of the University of Munich. He is author of the 'Schlosser Report' (on the 1st Treaty on Accession to the European Treaty on Jurisdiction and the Enforcement of Judicial Decisions, OJ C 71, 1979) and contributed substantially to the *Heidelberg-Report*.

V V Veeder QC has practised at the English Bar since 1972, specialising in commercial law and international trade. He has acted as advocate before the English Courts in London and overseas in Hong Kong, Bermuda, and Luxembourg; and as an advocate or arbitrator in arbitration proceedings principally in London, New York, The Hague, Paris, Switzerland, Stockholm, Singapore and Hong Kong under a variety of rules and institutions. He is a UK delegate to the UNCITRAL Arbitration Working Group, member of the ICC Commission on Arbitration and Council Member of the ICC Institute of World Business Law.

Dharmendra Rautray is a partner in the New Delhi based law firm, Kachwaha & Partners. He is a member of the Lincoln's Inn and completed his LLM in Commercial and Corporate Laws from the London School of Economics and Political Science. His areas of practice include arbitration, litigation, contracts, international trade and shipping. He is author of the *Master Guide to Arbitration in India* published by Wolters Kluwer (2008).

Dushyant Dave is a Senior Advocate, practising mainly in the Supreme Court of India. Dushyant is a member of the National Legal Services Authority constituted under the Legal Services Authorities Act 1987. He is a member of the Supreme Court Bar Association and of the Bar Association of India. He practises widely in the fields of commercial and corporate law, especially arbitration law. Dushyant was a member of the LCIA Court from 2003 until 2008 and is currently the President of LCIA Users Forum for Asia Pacific. He is on the Board of the American Arbitration Association and is currently Vice Chair of the Arbitration Committee of the IBA.

Peter Yuen is a partner based in the Hong Kong office of Freshfields. He has acted for clients in High Court proceedings in Hong Kong, court proceedings in China as well as arbitration proceedings (both ad hoc and institutional) in a variety of venues. He advises regularly on a range of commercial disputes including China related business disputes, regulatory and corporate compliance related investigations, banking related litigation and IP related disputes. Before studying law in England, Peter read chemistry at Oxford University, and he was a teaching fellow at Cornell University. He joined Freshfields in 1996, and is qualified as a solicitor in England & Wales and Hong Kong.

James Morrison is Counsel at the Secretariat of the ICC International Court of Arbitration. He leads the case management team that principally handles cases involving Asia and the Pacific. An Australian citizen, he is a graduate of the University of Sydney, where he studied economics and law, including a Masters Degree in Law, and also the University of Stockholm, from which he holds a Masters Degree in International Commercial Arbitration Law. He is admitted as a solicitor in the State of New South Wales. He previously worked in the litigation and dispute resolution department of an international law firm in Sydney.

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RECEPTION: 17.30

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