ICC Institute Advanced Level Training Programme

Co-chairs of the training:

José Manuel García Represa
Partner, Dechert LLP, France; Member, ICC Institute of World Business Law

Mélida Hodgson
Partner, Jenner & Block, New York, United States; Council Member, ICC Institute of World Business Law

Sunday 10 November 2019

08.30 – 09.00 Welcome coffee

09.00 – 09.15 Welcoming address, presentation of the ICC Institute, introduction and presentation of the mock cases

- Yves Derains, Founding Partner, Derains & Gharavi, France; Chairman, ICC Institute of World Business Law
- José Manuel García Represa
- Mélida Hodgson

09.15 – 10.00 Strategic considerations and procedures: When, how and to whom to request interim measures?

- Concept: must be temporary
- Powers of the ICC arbitral tribunals
- Role of the lex arbitri
- When can/should request for interim measures be made?
- To whom can/should interim measures be requested: emergency arbitrator, arbitral tribunal, national courts (concurrent jurisdiction)
- ICC procedure and statistics: Art. 28 ICC Rules
- Specific measures: security for costs, escrow accounts, stop payment orders relating to first demand bank guarantees, and counter-guarantees

- Fernando Serec, CEO and Head of the Litigation and Arbitration practice groups, Tozzini Freire Advogados, Brazil
- Patricia Ferraz, Counsel, ICC International Court of Arbitration, São Paulo

10.00 – 10.45 Mock Case
10.45 – 11.00 Coffee break

11.00 – 11.45 Practical considerations: The counsel’s perspective
- Burden of proof
- Types of measures that can be requested: a very broad range, but with limitations
- Ex-parte requests
- Discovery requests before national courts in aid of international arbitration (e.g., 28 USC 1782 requests)
- Most common defenses against requests for interim measures
  - María Inés Solá, Legal Counsel, Pan American Energy LLC, Argentina
  - Claudia Benavides, Partner, Baker & McKenzie S.A.S, Colombia

11.45 – 12.30 Mock Case

12.30 – 14.00 Lunch

14.00 – 14.45 Practical considerations: The arbitrator’s perspective
- Asymmetric information with the parties (especially at the outset of the case)
- Urgency and due process (can an arbitrator award ex parte measures?)
- Risks: prejudgment, awarding or denying measures may have a permanent effect (e.g., where one of the parties risks liquidation, where assets may disappear, etc.)
- Can/should arbitrators take a more active role (e.g., escrow accounts managed by tribunals; order counter-security)
  - Clifford J. Hendel, Founder, Hendel IDR, Spain
  - Elena Gutierrez, Independent Arbitrator & Professor at law, France

14.45 – 15.30 Q&A

15.30 – 15.45 Coffee break

15.45 – 16.30 Compliance, enforcement and other issues arising after interim measures are ordered/awarded
- “Order” v. “Award” of interim measures
- Enforcement considerations: what can the parties do?
- What can arbitrators do faced with a party’s refusal to comply with interim measures?
- Relevance of civil v. common law jurisdictions
  - Leidylin Contreras, Deputy Director, Office of International Trade Agreements & Treaties Administration (DICOEX), Ministry of Industry, Trade and SME’s, Dominican Republic
  - Patricio Grané, Partner, Arnold & Porter, United Kingdom

16.30 – 17.15 Q&A

17.15 – 17.30 Concluding remarks
- Mélida Hodgson
- José Manuel García Repesa

18.00 – 20.00 Cocktail reception