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The ITA Board of Reporters have reported on the following court decisions.

Global Transit Trading v. Ningbo Haitian, Intermediate People's Court of Ningbo, (2024) Zhe 02 Xie Wai Ren No. 1, 14 March 2024

Arthur X. Dong, JunHe LLP, ITA Reporter for China

Submitting a power of attorney to the tribunal is a mandatory requirement for a valid legal representation in litigation and arbitration seated in mainland China, while the practice may differ in arbitrations seated outside Mainland China. In this case, when the prevailing party applied before PRC court for recognition and enforcement of an SIAC award, the Respondent contended that it was not properly notified in the arbitration and that counsel for the Respondent was not authorized by the Respondent given no power of attorney was submitted to the SIAC. The PRC court thoroughly analyzed the facts and consented to SIAC's rules and practice that no power of attorney is mandatorily required for a party's legal counsel and recognized the SIAC award.

Colpensiones v. Axa Colpatria Seguros – Dissenting Opinion of Justice Guillermo Sánchez Luque, Council of State of Colombia, Administrative Law Chamber, 11001-03-15-000-2022-00772-01, 02 September 2022

Eduardo Zuleta Jaramillo, ZULETA Abogados Asociados S.A.S., ITA Reporter for Colombia

The Council of State decided on a constitutional injunction (*acción de tutela*) filed by Colpensiones, Colombia's public entity for the administration of pension funds. Justice Guillermo

Sánchez-Luque, a member of the third section, rendered a dissenting opinion to the judgment of the Council of State. Justice Sánchez-Luque utterly rejects the admissibility of constitutional injunctions against arbitral awards, even in exceptional cases. He emphasized the need to reclaim the nature of arbitration to entirely rule out constitutional injunctions against arbitral awards.

StoneX Markets LLC v. Cooperativa de Caficultores del Suroeste Antioqueño, Supreme Court of Justice of Colombia, Rad. No. 11001-02-03-000-2023-00008-00, 01 August 2023

Eduardo Zuleta Jaramillo, ZULETA Abogados Asociados S.A.S., ITA Reporter for Colombia

In a judgement dated 1 August 2023, the Colombian Supreme Court of Justice (the 'Supreme Court') rendered its first decision of the year regarding the recognition of a foreign arbitral award.

Dissenting opinion of ad hoc judge Ramiro Bejarano raises questions about the applicability of international arbitration grounds for impediments to domestic litigation, Supreme Court of Justice of Colombia, Rad. No. 73001-22-13-000-2023-00140-01, 18 October 2023

Eduardo Zuleta Jaramillo, ZULETA Abogados Asociados S.A.S., ITA Reporter for Colombia

On 18 October 2023, the ad hoc judges of the Civil Chamber of the Supreme Court of Justice decided on whether impediments presented by some Justices of the Civil Chamber to hear on the appeal of a constitutional injunction ('*tutela*') were admissible under the grounds of Article 56 of the Colombian Criminal Procedure Code.

While the constitutional injunction in question did not concern international arbitration, and most of the ad hoc judges rejected the impediments set forth by the Justices, the dissenting opinion of ad hoc judge Ramiro Bejarano raises questions regarding the applicability of international arbitration grounds of impediment and their applicability in the Colombian judicial system.

Rusoro Mining Limited v. Bolivarian Republic of Venezuela, Supreme Court of Justice of Colombia, 11001-02-03-000-2022-03860-00, 20 June 2024

Eduardo Zuleta Jaramillo, ZULETA Abogados Asociados S.A.S., ITA Reporter for Colombia

On 20 June 2024, the Colombian Supreme Court of Justice rejected the recognition of an investment award (the 'Award') rendered on 22 August 2016 in ICSID Case No. ARB(AF)/12/5 between Rusoro Mining Limited ('Claimant') v. The Bolivarian Republic of Venezuela ('Respondent').

Abbott Laboratories (Chile) Holdco SPA & Abbott Laboratories (Chile) Holdco Dos SPA in liquidation v. Roberto Maurice Ventura Crispino, Joyce Reina Ventura De Durán & Bella Clara Ventura Corkidi, Supreme Court of Justice of Colombia, 11001-02-03-000-2024-00239-00, 14 May 2024

Eduardo Zuleta Jaramillo, ZULETA Abogados Asociados S.A.S., ITA Reporter for Colombia

On 14 May 2024, the Supreme Court of Justice of Colombia ('the Court') issued a decision concerning the request for reconsideration of paragraph 2 of an order dated 26 April 2024 in the exequatur proceedings of an arbitration award issued on 19 April 2023 (ICC arbitration No. 25091/JPA/AJP), and its addendum dated 7 July 2023. This order granted Abbott Laboratories (Chile) Holdco SPA and Abbott Laboratories (Chile) Holdco Dos SPA in liquidation the opportunity to respond to the opposition raised by Roberto Maurice Ventura Crispino, Joyce Reina Ventura De Durán, and Bella Clara Ventura Corkidi (altogether, 'the Venturas') to the exequatur.

Société de Réalisations et d'Études pour les Industriels du Bois – Séribo v. Hainan Yangpu Xindadao Industrial Co. Ltd, Court of Cassation of France, First Civil Law Chamber, 11-10.347, 28 March 2012

Nataliya Barysheva & Valentine Chessa, MCL Arbitration, ITA Reporters for France

The French Cour de Cassation considered that the Paris Court of Appeal, deciding upon an appeal of an exequatur order, failed to address the arguments asserting that the recognition of an arbitral award was contrary to international public policy.

M.Th. Ehrmann v. M. P. Billon, Court of Cassation of France, First Civil Law Chamber, Arrêt n° 782, F-P+B+I, pourvoi n° P 08-12.648, 06 July 2011

Nataliya Barysheva & Valentine Chessa, MCL Arbitration, ITA Reporters for France

The French Cour de cassation quashed the decision of the Lyon Court of Appeal that confirmed enforcement of a foreign award, considering that the arbitral tribunal decided out of the scope of the arbitration agreement that encompassed only the reimbursement of the fiduciary costs concerning the subscription of the shares and did not include other claims.

Société M. Schneider Schaltgerätebau und Elektroinstallationen GmbH v. Société CPL Industries Limited, Court of Appeal of Paris, 10 September 2009

Nataliya Barysheva & Valentine Chessa, MCL Arbitration, ITA Reporters for France

The Paris Court of Appeal confirmed that only a flagrant, effective, and concrete violation of international public policy would lead to set aside the arbitral award. The Paris Court of Appeal also held that for a fraud allegation to be admissible before the set-aside judge, such an argument should have been raised before the arbitral tribunal and cannot be reserved as a ground for a subsequent set-aside application.

Société IPSA Holding, société CBF associés et société Brouard-Daudé v. Société Alpha Petrovision Holding AG, Court of Cassation of France, Commercial Law Chamber, N° 639 F-P+B,

pourvoi n° 19-18.849, 12 November 2020

Nataliya Barysheva & Valentine Chessa, MCL Arbitration, ITA Reporters for France

The exequatur of an arbitral award rendering enforceable a decision condemning the debtor disregards the principle of the stay of individual proceedings but may be granted in order to grant recognition of such award in France when the creditor's claims are disputed before the judge in charge of the safeguard proceedings.

M. Peter Z. v. M. Kenneth Y., Court of Cassation of France, First Civil Law Chamber, Arrêt n° 611 FS P+B, pourvoi n° 17-19.240, 26 June 2019

Nataliya Barysheva & Valentine Chessa, MCL Arbitration, ITA Reporters for France

The request for recognition in France of a foreign decision is not subject to the existence of assets that can be subject to enforcement measures.

Malaysia v. M. [P] [E] [X] and others, Court of Cassation of France, First Civil Law Chamber, Arrêt n° 303 F-D, Pourvoi n° J 22-21.854, 15 May 2024

Nataliya Barysheva & Valentine Chessa, MCL Arbitration, ITA Reporters for France

The French Cour de Cassation confirms that in accordance with Article 1526 of the French Code of Civil Procedure the enforcement of an arbitral award can be suspended if it is likely to seriously prejudice the rights of one of the parties and that an application for a stay of enforcement of an exequatur order under Article 958 of the same code is not admissible in the presence of special texts laying down stricter conditions.

Douala International Terminal v. Port Autonome de Douala, Court of Cassation of France, First Civil Law Chamber, Arrêt n° 345 FS-B, Pourvoi n° B 23-10.972, 19 June 2024

Nataliya Barysheva & Valentine Chessa, MCL Arbitration, ITA Reporters for France

The French Cour de cassation ruled that the existence of a close personal relationship between an arbitrator and a party's counsel may create a reasonable doubt in the parties' minds as to the arbitrator's independence and impartiality, which justifies setting aside an arbitral award on such ground.

Astaldi S.p.a. v. Peri LLC, Court of Appeal of Rome, 414/2023, 20 January 2023

Livia Buggiaretti & Maria Beatrice Deli, DeliSasson, ITA Reporters for Italy

The production of the duly authenticated original award and arbitration agreement (or a duly

certified copy thereof) is a formal and mandatory requirement for the recognition of the foreign award.

Azienda Agricola Eridano Di Zermani F.lli S. S Soc. Agr. et al. v. Co Pa Dor Soc. Agr. Coop., Supreme Court of Cassation of Italy, 32996/2022, 09 November 2022

Livia Buggiaretti & Maria Beatrice Deli, DeliSasson, ITA Reporters for Italy

The arbitral decision that solely addresses evidentiary issues is subject to set-aside proceeding?

Papa Giovanni Società Cooperativa Sociale v. Leone Lucia, Supreme Court of Cassation of Italy, 6501/2023, 03 March 2023

Livia Buggiaretti & Maria Beatrice Deli, DeliSasson, ITA Reporters for Italy

The scope of the appeal of an arbitral award is limited solely to a legitimacy scrutiny of the arbitral award.

Carlo Mastrodomenico & Giuseppe Silveri v. Alpla Italia S.r.l., Supreme Court of Cassation of Italy, 23984/2023, 07 August 2023

Livia Buggiaretti & Maria Beatrice Deli, DeliSasson, ITA Reporters for Italy

The arbitral tribunal may decide the dispute although another judgment on the same (or related) facts is pending before the national judicial authority (either civil or criminal).

A.F.M. s.r.l. v. Swisslog Malaysia SDN BHD, Court of Appeal of Bologna, 1781/2014, 08 April 2022

Stefano Azzali & Michele Zamboni, Chamber of Arbitration of Milan, ITA Reporters for Italy

The Bologna Court of Appeal was called to decide on the validity of two distinct arbitration clauses. The Court found the first clause, providing that the seat of any arbitration shall be Beijing (China) and that any arbitral proceedings shall be governed by the CIETAC Rules and conducted by an arbitrator appointed by the CIETAC President, invalid. Notably, the Court reasoned that such a clause did not reveal an actual intention of the parties to refer to arbitration the settlement of their disputes, but only an intention to agree on the modalities and procedure of arbitration should an arbitration agreement be subsequently (and eventually) concluded. As to the second clause, the Court held that an arbitration clause granting only one of the parties the power to refer any disputes to arbitration, as an alternative to court litigation, is valid, and found that the clause, included in the general terms and conditions of one of the parties referred to in the contract, had been validly accepted since it was or should have been known by the non-drafting party.

Danieli & C. Officine Meccaniche S.p.a. v. Southern HRC SDN. BHD., Court of Appeal of Trieste, 393/2023, 07 August 2023

Stefano Azzali & Michele Zamboni, Chamber of Arbitration of Milan, ITA Reporters for Italy

The Trieste Court of Appeal held that, in case of partial annulment of a foreign award, the parts of the award not subject to annulment cannot be enforced through the procedure envisaged for the recognition and enforcement of foreign arbitral awards. Rather, the award creditor should seek the recognition and enforcement of the foreign judgment that partially set aside the award, following the relevant procedure.

Alpe S.r.l. v. Cheboksarsiy Agreagatnij Zavod O.A.O., Supreme Court of Cassation of Italy, 1647/2022, 19 January 2022

Stefano Azzali & Michele Zamboni, Chamber of Arbitration of Milan, ITA Reporters for Italy

The Supreme Court held that the use of the Russian language in the arbitration proceedings, provided as a default option by the arbitral institution chosen by the parties under the contract, did not amount to a due process or public policy violation capable of justifying the refusal of the enforcement of the foreign arbitral award.

Plus Petrol Norte S.A. en Liquidación v. Perú Petro S.A., Superior Court of Justice of Lima, Expediente N° 000415-2023-0 (EJE), 29 April 2024

Fernando Cantuarias Salaverry, Law School of Universidad del Pacìfico, ITA Reporter for Peru

The Commercial Chamber of the Superior Court of Justice of Lima orders the recognition of a foreign award.

Aiteo Eastern E&P Company Limited v. Shell Western Supply & Trading Limited & Ors [2024] EWHC 1993 (Comm), High Court of Justice of England and Wales, Queen’s Bench Division, Commercial Court, Case No. CL-2024-000050, 01 August 2024

Nicholas Fletcher, 4 New Square, ITA Reporter for England & Wales

The fact that the ICC Court has acceded to a challenge to an arbitrator on the basis of apparent bias does not create a res judicata for the purposes of a challenge under s. 68 of the Arbitration Act 1996 on the grounds of serious irregularity. The ICC Court is not determining a legal right and its decision on such a challenge is of a procedural nature. It is however a factor for a fair-minded observer to take into account given the ICC Court’s experience in determining such challenges and the fact that such challenges rarely succeed.

The fact that a finding of apparent bias has been made does not itself mean that the challenger has

no obligation to demonstrate substantial injustice. Substantial injustice would however normally be inferred unless there are circumstances to rebut it.

In determining whether to grant an extension of time for a s.68 challenge under s.73 of the Arbitration Act, there are a number of factors to be taken into account. The presence of apparent bias was a significant factor to be taken into account.

Ioan Micula et al. v. Government of Romania, United States Court of Appeals, District of Columbia Circuit, No. 23-7008, 14 May 2024

Sophia Sepulveda Harms, King & Spalding LLP, ITA Reporter for the United States of America

Appellees Ioan Micula et al. ('Micula') initiated arbitration against the Government of Romania ('Romania') for the premature repeal of tax incentives intended to entice investment in economically disadvantaged regions of the country.

In December 2013, the arbitration tribunal issued an award in favor of Micula. Following Romania's failed attempt to annul the award, the European Commission ruled that Romania's satisfaction of the award would be contrary to EU law. The General Court of the EU invalidated this decision in June 2019.

In parallel proceedings, Micula sought and obtained confirmation of the award in September 2019 from the United States District Court for the District of Columbia ('D.D.C.') for approximately US$ 356 million ('2019 Confirmation'). Romania challenged subject matter jurisdiction on grounds that the Sweden-Romania BIT was void as a result of Romania's accession to the EU in 2007. The D.D.C. ruled that this challenge was inapplicable because the accession post-dated the parties' dispute, and the United States Court of Appeals for the District of Columbia Circuit ('D.C. Circuit') affirmed.

In 2022, the EU's highest court (the 'CJEU') issued two decisions that held that EU courts could not enforce the satisfaction of the award because it would constitute 'state aid,' in contravention of EU law. Romania sought relief from the 2019 Confirmation in light of these decisions, and the D.D.C. denied the motion. Romania timely appealed to the D.C. Circuit on the basis that 1) the 2019 Confirmation was 'void,' because the 2022 CJEU decisions retroactively rendered its consent to arbitrate under the Sweden-Romania BIT 'void ab initio;' 2) the D.D.C.'s subject matter jurisdiction depended on the 2019 decision of the General Court, which was overturned by the CJEU; and 3) the D.D.C. abused its discretion in denying relief from judgment based on principles of international comity. The D.C. Circuit denied these bases and affirmed the decision of the D.D.C.

Estate of Ke Zhengguang v. Yu Naifen Stephany, United States Court of Appeals, Fourth Circuit, No. 23-1144, 27 June 2024

Viva Dadwal, King & Spalding LLP, ITA Reporter for the United States of America

Plaintiff/Petitioner – Appellee, Estate of Ke ('Estate') petitioned under the Convention on the

Enforcement and Recognition of Foreign Arbitral Awards ('New York Convention' or 'Convention') for enforcement of a Hong Kong International Arbitration Center (HKIAC) arbitral award against Defendant/Respondent – Appellant, Yu Naifen Stephany ('Yu'), a United States citizen residing in Maryland. The United States Court of Appeals for the Fourth Circuit ('Fourth Circuit' or 'Court') affirmed the decision of the United States District Court for the District of Maryland to (1) reject Yu's motion to dismiss on grounds of *forum non conveniens*, failure to join necessary parties, and public policy under Article V of the New York Convention; (2) recognize the $3.6 million award; and (3) enter a consolidated final judgment in the Estate's favor.

Molecular Dynamics Ltd., et al v. Spectrum Dynamics Medical Ltd., et al, United States District Court, Southern District of New York, No. 1:22-cv-05167-KPF, 23 July 2024

Julian Ranetunge, King & Spalding LLP, ITA Reporter for the United States of America

The Petitioners filed a petition under Section 10 of the Federal Arbitration Act ('FAA'), 9 U.S.C. § 10, to vacate two arbitral awards that were rendered by an arbitral tribunal that was seated in Geneva, Switzerland and governed by Swiss law. The relevant contract contained a forum selection clause that stated in relevant part that 'on matters … concerning the Chosen Arbitration, the courts of New York, New York will have exclusive jurisdiction thereupon.'

The United States District Court for the Southern District of New York ('Court') found that the Forum Selection Clause must be interpreted in light of the New York Convention. Only a 'competent authority' of the country in which, or under the law of which, an award was made (i.e., a court of 'primary jurisdiction') may vacate or annul the award (per New York Convention, art. V(1)(e)). The Petitioners had not identified any decision from a U.S. court in the 54 years since the U.S. acceded to the New York Convention holding that a U.S. court could vacate an award made in a foreign state under foreign law.
