

Editors in chief: Maxime Berlingin, Maarten Draye, Sophie Goldman and Sigrid Van Rompaey

AGENDA

9 DECEMBER 2016	(13:00-18:30) CEPANI ADR Academy: Third Class on "the A in ADR"
9 DECEMBER 2016	(13:45-19:00) Joint ICCYAF-CEPANI40 Conference: "Arbitrating intra-corporate law disputes"
13 DECEMBER 2016	(14:00-17:30) Colloquium "Arbitration meets the Competition Authorities"
12 JANUARY 2017	(09:00-17:00) La Stratégie dans l'Arbitrage International / De Strategie in Internationale Arbitrage
9 MARCH 2017	(14:00-19:00) Third Party Funding in Arbitration

REPORTS

- » [AMENDMENTS TO THE RULES OF ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE](#)
- » [INTERVIEW WITH PASCAL HOLLANDER FOLLOWING HIS APPOINTMENT AS VICE CHAIR OF THE ARBITRATION COMMITTEE OF THE INTERNATIONAL BAR ASSOCIATION \(IBA\)](#)
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AMENDMENTS TO THE RULES OF ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE



Marc Dal
Partner, DALDEWOLF

At its session held on 20 October 2016 in Bangkok, the ICC Executive Board adopted several amendments to the ICC Arbitration Rules, which will enter into force on 1 March 2017. Please find below a short highlight of the two major changes to the existing Rules.

The purpose of the first change is to expedite the initial phase of the arbitration proceedings: the arbitral tribunal shall transmit to the Court the terms of reference signed by it and the parties within 30 days (and no longer two months) of the date on which the file has been transmitted to it. The power of the Court to extend this time limit (pursuant to a reasoned request from the arbitral tribunal or on its own initiative) is maintained.

The second change relates to the insertion of Rules relating to the Expedited Procedure. The Expedited Procedure Rules shall apply if the amount in dispute does not exceed USD 2,000,000 or if the parties so agree. The purpose of these new Rules is to accelerate the arbitration proceedings for what is considered as low-stake cases.

According to these Expedited Procedure Rules, a sole arbitrator shall be appointed. No terms of reference shall be requested. The case management conference shall be held no later than 15 days after the transmission of the file to the arbitral tribunal (a time extension may be granted by the Court). The arbitral tribunal shall have the power to adopt procedural measures as it considers appropriate. For example, the arbitral tribunal, after consultation of the parties, will not allow request for production of documents or limit the number, length and scope of the written submissions and written witness evidence. The arbitral tribunal may decide the dispute without a hearing, solely on the basis of the documents submitted to the parties. Should a hearing be held, it can be conducted by videoconference, telephone or similar means of communication. The award shall be rendered within six months from the date of the case management conference. Specific arbitration fees shall apply to the Expedited Procedure.

Finally, the Expedited Procedure Rules shall not apply if the arbitration agreement was concluded before 1 March 2017.

**INTERVIEW WITH
PASCAL HOLLANDER
FOLLOWING HIS
APPOINTMENT AS VICE
CHAIR OF THE
ARBITRATION
COMMITTEE OF THE
INTERNATIONAL BAR
ASSOCIATION (IBA)**



*Pascal Hollander
Partner, HANOTIAU & VAN DEN
BERG*

One of the well-known CEPANI members, Pascal Hollander, has been appointed as Vice Chair of the Arbitration Committee of the International Bar Association (IBA). This occasion offered a perfect opportunity to inform CEPANI members on the IBA and its activities via an interview of Pascal conducted by Maarten Draye.

Pascal, congratulations on your appointment as Vice Chair of the Arbitration Committee of the International Bar Association. For those who are less familiar with the IBA, could you tell us a bit more about the role of the IBA, and in particular, its initiatives for arbitration?

The IBA is the largest professional association of lawyers, with above 55,000 individual members, coming from all over the world. Its Legal Practice Division is comprised of specialized committees, amongst which the Arbitration Committee which is one of the largest, if not the largest one, with a membership of more than 4,000. In September or October of each year, the IBA holds a 5-day annual conference where all specialized committees organize working sessions. The participants to the IBA annual conference may attend the working sessions of their choice. In addition, each committee organizes each year one or more specialized conferences.

For the last 20 years, the IBA Arbitration Committee has been instrumental in the development of arbitration 'soft law'. One thinks of course to the IBA Rules on the Taking of Evidence in International Arbitration (2010), the IBA Guidelines on Conflicts of Interest in International Arbitration (2014), the IBA Guidelines on Party Representation in International Arbitration (2013) and the, admittedly less known, Guidelines for Drafting International Arbitration Clauses (2010).

As you mentioned, the IBA Arbitration Committee has been responsible for a number of important soft law instruments in arbitration. Which one of these instrument do you think is most successful and why?

In my opinion, the IBA Rules on the Taking of Evidence in International Arbitration have clearly established themselves as THE international standard for arbitral proceedings. There is hardly nowadays an international arbitration conducted without a reference to these rules being made in the procedural rules adopted by the parties and the arbitral tribunal.

The obvious reason for the success of the IBA Rules of Evidence is the inappropriateness of local rules of evidence (often those of the seat of the arbitration) to govern proceedings opposing parties coming from quite different legal backgrounds. The IBA Rules have allowed to level the playing field between the parties (or more accurately between counsel), which is key to the success of arbitration as a mode of resolution of international disputes.

What do you think of the fear of some that too much soft law risks affecting the flexibility of the arbitration procedure, which is generally considered as one of its most important advantages?

As I always tell my students at the beginning of the very first class of my course of arbitration taught at the CAPA of the Brussels Bar, "arbitration is about flexibility"! I do not believe that such flexibility is affected by the development of soft law.

Indeed, the instruments developed by the IBA are not automatically applicable: there must be an agreement of the parties or a decision of the arbitral tribunal for these rules or guidelines to be applicable (see Paragraph 2 of the Preamble of the Rules of Evidence; Article 1 of the Guidelines on

Party Representation). If the Parties want to exclude their application, they can do it and the arbitral tribunal will be bound by the parties' agreement thereon. In addition, it is quite common to read in Terms of Reference or Procedural Orders No. 1 that the Tribunal "may take guidance" or "may find inspiration" in the IBA Rules of Evidence. Arbitrators are thus rarely compelled to blindly follow the IBA rules, which they can leave aside if they find they are not suitable for resolving a specific issue of evidence in front of them.

As to the Guidelines on Conflicts of Interests, they are mainly a tool for arbitrators to help them determine if their independence of impartiality might be challenged, and for counsel to decide whether such challenge has enough chances of success. While sometimes referred to in court decisions addressing the independence and/or impartiality of an arbitrator, they are not always followed.

How did you become involved with the IBA yourself?

Having gotten (a long time ago ...) an LL.M. degree in the United States and having been involved from the very beginning of my career in cross-border transactions and dispute resolution, it was only natural for me to have a keen interest in the activities of the IBA, which is almost quintessential to an international law practice.

As far as I can remember, the very first IBA conference I attended was the Second IBA International Arbitration Day in Düsseldorf in November 1998. I still have a very clear memory of my discussion with Bernard Hanotiau (whom I had met for the first time as chairman of an ICC Tribunal in proceedings where I was counsel to one of the parties and which had been completed a few months before) at the bar of the hotel where the conference was taking place, around 11 pm or so, when he asked me if I would be interested in joining him as partner in his then law firm. You can imagine that it didn't take me much time and thinking to positively react to such an invitation ...

What brought you to take up an active role?

Like for any big organization, visibility matters. In my case, I first held an officer's position in the International Distribution and Franchising Committee of the IBA, which was my primary area of specialization. But as I developed my practice as international arbitrator, I felt it was important for me to get actively involved in the management of the Arbitration Committee, because of its ever increasing instrumental role in the development of international arbitration and of the soft law we discussed earlier. And on top of it, it also gave me fantastic opportunities to meet very fine lawyers from all over the world, some of them having become real friends today.

Would you recommend Belgian arbitration practitioners to join the IBA?

Definitely, and especially the younger ones, as the IBA Arbitration Committee also set up its IBA Arb40 group. While – let's not hide it – participating to the activities of the IBA implies a certain investment (both in time and money), the rewards in access to key information and in networking are definitely worth it.

Thank you!

**REPORT ON ADR
ACADEMY – SECOND
CLASS – 9 NOVEMBER 2016**



*Maxime Malherbe
Research Assistant for Arbitration
and ADR at the University of
Liège*

The first class of the ADR Academy took place in October 2016 and dealt with the question of emotions in the field of mediation. An international mediator, Thierry Garby, was invited as guest speaker. The second class took place this month and dealt with a specific mediation issue: conflicts in family businesses. Professor Ad Kil was invited as guest speaker.

In order to understand conflicts in family businesses, Prof. Ad Kil gave the participants a framework to explain why they occur. In brief, three circles need to be drawn, one for each of the following ensembles: family, company and ownership of that company. Family members, workers and shareholders have then to be assigned to those circles. Conflicts are more likely to arise when an individual belongs to more than one circle. The greater the number of overlapping cases, the greater the chances of conflicts.

The second part of the class was dedicated to the study of differences between generations. That new field of research has demonstrated that each generation shows particular features, e.g. people born between 1940 and 1955 are idealistic and those born between 1985 and 2015 are limitlessly active.

Generational features are tendencies so that individuals might still go against the grain. Research also showed that workers who must collaborate with people from other generations tend to adapt to each other. On the other hand, they are more effective when they are working with people from their own generation.

Finally, Prof. Ad Kil focused on mediation strategies. According to him, a mediator should first facilitate and then evaluate. To make his point, he compared the mediator to a doctor. If the latter refuses to reveal to a patient the nature of his disease, there would be no need to see a doctor. Mediation is a long lasting process. Only at a later stage should the mediator make recommendations to help the parties to find an agreement, meaning moving from a facilitating to an evaluating strategy.

NEWS

» LAUNCH OF THE ICC'S REVISED RULES OF ARBITRATION

Amendments to the ICC Rules of Arbitration have been made with the aim of further increasing the efficiency and transparency of ICC arbitrations.

The revised rules will apply from 1 March 2017.

The ICC International Court of Arbitration presents its Revised Rules of Arbitration. [The launch will be held in Paris on 8 December 2016.](#)

A PDF copy of the updated rules can be downloaded [here](#).

» ADR ACADEMY: REGISTER NOW!

There are a few places left for the third class of the ADR Academy! For more information and how to enroll, please check out the CEPANI [website](#)

VARIA

- » BEMIDDELING-MEDIATIE (ONTWERP)REGELGEVING IN BELGIË, NEDERLAND, EN DE EU: DE ACTUELE STAND VAN ZAKEN (1 DECEMBER 2016, ANTWERPEN)

Op 1 december 2016 organiseert de redactie van het Nederlands-Vlaams tijdschrift voor mediatie en conflictmanagement (TMD) een congresmiddag geheel gewijd aan de op stapel staande bemiddelingswetgeving in België en Nederland. Ook zullen de uitkomsten van de recente evaluatie van de EU mediatierichtlijn 2008 onder de loep worden genomen.

- » COLLOQUE FRANCARBI: LE CONTRADICTOIRE DANS L'ARBITRAGE (2 DÉCEMBRE 2016, BRUSSELS)

Francarbi organise le 2 décembre 2016 à Bruxelles un colloque sur le thème du contradictoire. Il s'agit d'un principe essentiel à respecter tout au long de la procédure arbitrale sans quoi la sentence peut être annulée. Tout arbitre doit donc l'avoir constamment à l'esprit avec ses exigences et ses limites.

- » SECOND CEA CAPITULO BELGA ANNUAL CONFERENCE (17 FEBRUARY 2016, BRUSSELS)

The Club español del arbitraje Capítulo Belga will held its second annual conference on 17 February 2017 at the Brussels office of Linklaters. The subject of this conference will be "Arbitration in highly regulated sectors: Energy, Telecom, Pharma, Banking & Finance". The conference is organized with the support of the ICC International Court of Arbitration, CEPANI and CAM, and is free of charge.

The full program will be available on the CEA website shortly. You can pre-register for this event by sending an e-mail to: ceabelgium@outlook.com.

- » THE 2017 BRUSSELS PRE-MOOT (3 AND 4 APRIL 2017, BRUSSELS)

The Brussels Pre-Moot will take place on 3 and 4 April 2017 in Brussels.

Following the success of the last editions, the Brussels Pre-Moot will be held again this year. Practitioners from all over the world are encouraged to enrol as arbitrators to see how participants deal with the challenges of emergency arbitration, multiple parties to arbitration and avoidance of contracts under the CISG that are the object of the 24th Willem C. Vis International Commercial Arbitration Moot.

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