



Institute for
**TRANSNATIONAL
ARBITRATION**

26th Annual ITA Workshop

Modern Enforcement of Arbitral Awards: “Show Me the Money”



26th Annual ITA Workshop

**Modern Enforcement
of Arbitral Awards:
“Show Me the Money”**

June 18-20, 2014

Westin Galleria Hotel • Dallas, Texas

Register Now! cailaw.org/ita

Highlights

- | The #1 annual international arbitration conference in America
- | Featured Luncheon Speaker:
Hon. Bernardo Sepúlveda-Amor, Vice President, International Court of Justice
- | Welcome Dinner at the **Bush Presidential Library** and other special networking events
- | Mock scenes and expert panels on award enforcement expectations, realities, risks and strategies
- | Young Arbitrators Roundtable
- | **ITA Members** attend the Workshop and all membership activities for **free**, including the Advisory Board Annual Dinner at the Dallas Country Club



ITA is an Institute of
**THE CENTER FOR AMERICAN
AND INTERNATIONAL LAW**

26th Annual ITA Workshop

Modern Enforcement of Arbitral Awards: “Show Me the Money”

SCHEDULE

June 18

Workshop Co-Chairs

Mark E. Feldman
Peking University School of
Transnational Law
Shenzhen

Mark A. Kantor
Independent Arbitrator
Washington, D.C.

James L. Loftis
Vinson & Elkins RLLP
London and Houston

Constantine Partasides QC
Three Crowns LLP
London

Introduction

Enforceability of awards is often touted as the key advantage of the arbitral process over litigation. Indeed, on one view, the only objective measure of whether a particular arbitration has been a success is whether, at the end of the day, the resulting award is complied with or, if not, effectively judicially enforced. Enforcement is therefore a primary justification for the arbitral system and a preoccupation that pervades the entire process, and it is the key, and often in practice the only, point of contact between a given arbitration and national legal systems. Some argue that when it ‘works’ – when an award is enforced – it is the strongest selling point for arbitration; when it doesn’t, it calls into question the credibility of the whole system. Others argue that careful judicial review before enforcing an arbitration award is essential to the legitimacy of the arbitral system. As such, this is a topic that will appeal beyond arbitration aficionados – specialist advocates and arbitrators – to a broader constituency of corporate users and those for whom arbitration is only a part-time specialism.

Against this backdrop, the Workshop this year will focus on challenges to effective enforcement, both old and new. This will allow a fresh dialogue on some of the classic intellectual issues in our field. It will also provide practical pointers to robust enforcement strategies and novel approaches to getting value out of arbitration claims, with contributions from non-legal constituencies who can bring new ideas into the conversation.

3:00 REGISTRATION

3:30 WELCOME TO THE WORKSHOP

— R. Doak Bishop, ITA Chair, King & Spalding LLP, Houston

YOUNG ARBITRATORS DALLAS ROUNDTABLE

Presented by the
ITA Young Arbitrators Initiative Committee

3:45 ENFORCEMENT AGAINST BANKRUPT/INSOLVENT COMPANIES

In light of the serious financial and social crises facing a number of significant countries in the global economy, the solvency of parties in international arbitration becomes an increasing problem that impacts practitioners’ strategies when initiating arbitrations, when seeking interim relief during an arbitration and when seeking enforcement of an award. This panel of experienced arbitration lawyers will discuss some of the issues that arise in international arbitration when confronting companies on the verge of bankruptcy or already adjudicated as bankrupt and offer possible solutions.

MODERATOR — Valeria Galíndez, Uría Menéndez, São Paulo, Chair, ITA Young Arbitrators Initiative

PANELISTS — Jennifer Gorskie, Chaffetz Lindsey LLP, New York
— John Adam, Latham & Watkins LLP, Paris
— Montserrat Manzano, Von Wobeser y Sierra, Mexico City



2013 ITA Workshop

What a 2013 Participant liked best:

“The variety of topics, the insightfulness of comments of the panelists.”

SCHEDULE

June 18

4:30 BREAK

4:50 PROVISIONAL MEASURES TO SECURE ENFORCEMENT

The increased use of dilatory tactics and strategies aimed at concealing assets vulnerable to attachment is leading practitioners to search for different mechanisms for securing assets for future enforcement of arbitral awards. This panel will discuss the convenience, requirements and efficiency of provisional measures and other forms of interim relief to secure assets for enforcement.

MODERATOR — Ank Santens, White & Case LLP, New York

PANELISTS — Natalie Reid, Debevoise & Plimpton LLP, New York

— Viren Mascarenhas, Freshfields Bruckhaus Deringer LLP, New York

— Cecilia Flores, Haynes and Boone, LLP, Mexico City

5:30 CLOSING REMARKS

5:30 WORKSHOP WELCOME RECEPTION

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haynesboone
Setting precedent.

Vinson&Elkins LLP

7:00 WORKSHOP DINNER RECEPTION (Optional)

** SOLD OUT **

Café 43 at the George W. Bush Presidential Library

Sponsored by

BAKER BOTTS

(Please indicate on the registration form if you wish to attend – ticket price: \$75 per person) (Buses will depart from the hotel lobby at 6:35 for the Bush Library and will return to the hotel at the end of the evening)



SCHEDULE

June 19



Mark E. Feldman



Mark Kantor



James Loftis



Constantine Partasides QC



The Hon. Bernardo
Sepúlveda-Amor

— Workshop Co-Chairs —

Luncheon Speaker

8:50 WELCOME

— **R. Doak Bishop**, ITA Chair, King & Spalding LLP, Houston

9:00 THE EXPECTATION: HOW IMPORTANT IS ENFORCEMENT IN THE CHOICE OF INTERNATIONAL ARBITRATION?

This panel will provide insight into how corporate legal departments evaluate litigation risk and enforcement risk and the role enforcement plays in making choices, how external counsel advise them, and how they pick which cases to fight and which to settle (and the extent to which enforcement risk plays into this).

MODERATOR — **Kevin O’Gorman**, Norton Rose Fulbright, Houston

PANELISTS — **Michael S. Goldberg**, Baker Botts L.L.P., Houston

— **Karl Hennessee**, Vice President, Public Law & Technology – Halliburton Energy Services, Houston

— **Gregory Odry**, General Counsel, GDF Suez Energia Centroamerica, Panama

9:45 THE PRESENT REALITY: HOW WELL DOES ENFORCEABILITY HOLD UP IN PRACTICE?

Including a Presentation of the Results of ITA’s 2014 Survey on Enforcement Experience in New York Convention Jurisdictions

Addressing the following:

- i. The Queen Mary/White & Case 2010 survey on enforcement statistics, and any updates thereto
- ii. Key examples of significant ‘wins’ that were successfully enforced, and others that have been successfully undone at the enforcement stage
- iii. Compare the enforcement picture for arbitration awards (facts/figures) versus enforcement of judgments from other fora (update on developments re Hague Convention on the Recognition and Enforcement of Foreign Judgments)
- iv. 2014 ITA survey results

MODERATOR — **James L. Loftis**, Workshop Co-Chair, Vinson & Elkins RLLP, London

PANELISTS — **Mark Lowes**, Vice President for Litigation, KBR, Inc., Houston

— **Gaëtan Verhoosel**, Three Crowns LLP, London

— **Reinmar Wolff**, University of Marburg, Marburg

10:50 BREAK

11:10 MORNING MOCK: ENFORCEMENT STRATEGY STARTS EARLY: CHOOSING THE SEAT OF THE ARBITRATION

Introduction: **Mark Feldman**, Workshop Co-Chair, Peking University, School of Transnational Law, Shenzhen

When Beijing-based Baobao, Inc. negotiates a concession agreement for the construction of an airport terminal in east Africa, counsel and clients weigh options for selecting the arbitral situs. Both traditional (London, Paris) and emerging (Hong Kong, Singapore, Mauritius, Bahrain, Miami) venues are considered. Enforcement-related factors such as risk of set-aside and location of assets feature prominently in the discussion.

In-House Counsel.....**Fedelma Claire Smith**

Outside Counsel.....**Jack J. Coe, Jr.**

Outside Counsel.....**Claudia Salomon**

Private Investigator.....**Ank Santens**

12:00 LUNCHEON

The Honorable Bernardo Sepúlveda-Amor
 Vice President
 International Court of Justice
 The Hague and Mexico City

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1:45 RECENT CHALLENGES TO ENFORCEMENT IN THE INVESTMENT TREATY FIELD

Roundtable discussion of key enforcement-related issues that have emerged in the investment treaty arbitration context, including immunity from execution, the role of arbitral institutions and States in supporting enforcement, post-award settlements, and enforcement against investors and third parties.

MODERATOR — Sabine Konrad, McDermott Will & Emery LLP, Frankfurt

PANELISTS — Dolores Bentolila, Winston and Strawn LLP, Geneva

— Karel Daele, Mishcon de Reya, London

— Martina Polasek, Senior Counsel, International Centre for Settlement of Investment Disputes (ICSID), Washington, D.C.

2:30 THE MARKET FOR AWARDS

This presentation about third party funding and monetization of awards will provide an eye-opening perspective on awards as financial assets, discussing the financing and sale of awards and enforcement by those who purchase them.

MODERATOR — Alvaro Galindo, Dechert LLP, Washington, D.C.

PANELISTS — Victoria Shannon, Assistant Professor of Law, Washington & Lee University School of Law, Lexington

— Mick Smith, Partner & Co-Founder, Calunius Capital LLP, London

— Maxi Scherer, WilmerHale LLP & Queen Mary University of London, London

3:15 BREAK

3:35 AFTERNOON MOCK: 21ST CENTURY ENFORCEMENT STRATEGIES

Introduction: Elizabeth Snodgrass, Freshfields Bruckhaus Deringer LLP, London

When Apex Oil Corp’s favorable arbitral award against the National Oil Company of Puritania is set aside on spurious grounds in Puritania, the place of arbitration, counsel and clients convene to consider options for realizing value from the award and putting pressure on the counterparty voluntarily to comply with the award. The group considers the prospects for enforcement outside of Puritania notwithstanding the annulment of the award, cutting edge methods for locating assets to enforce against and indirect support to enforcement such as the suspension of generalized trade preferences or other political levers.

In-House General Counsel John Fellas
 In-House Counsel..... Tomasz Sikora
 Outside Counsel.....Elizabeth Snodgrass
 Asset TracerJim Mintz

4:25 THE SPECTRE OF ENFORCEMENT RISK AND INEFFICIENT ARBITRAL PROCEDURES

This panel of experienced arbitrators and counsel will examine the tension between efficient procedures and enforcement risk in the setting and enforcing of procedural orders in international arbitration.

MODERATOR — Eduardo Zuleta, Gómez-Pinzón Zuleta, Bogotá

PANELISTS — Michael Evan Jaffe, Pillsbury, Washington, D.C.

— Jean E. Kalicki, Arnold & Porter, Washington, D.C.

— Elisabeth Eljuri, Norton Rose Fulbright, Caracas

5:10 CONCLUDING REMARKS

— Mr. Bishop

6:30-9:00

ITA ADVISORY BOARD DINNER

(Advisory Board members, Academic Council, Board of Reporters, Board of Editors and Workshop faculty)

Dallas Country Club

(Buses will depart from the hotel lobby at 6:10 and will return to the hotel at the end of the evening)

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ITA FORUM & NETWORKING ADVENTURE

June 20

9:00-NOON

ITA FORUM

(Advisory Board members, Academic Council, Board of Reporters, Board of Editors and Workshop faculty)

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3:00 - 8:30

DALLAS NETWORKING ADVENTURE

Optional – Ticket Price \$85

George W. Bush Presidential Library Museum
Mi Cocina Restaurant, Lakewood

Don't miss this unique networking opportunity. Tickets are \$85 per person*. Please register on your registration form.

A bus will depart from the Westin Galleria Hotel lobby at 2:30 pm and will return to the hotel at about 8:00. Then, for those who wish to continue, country and western dancing at Midnight Rodeo.

**Price includes museum tickets, a magnifico Tex-Mex dinner, and transportation to and from the hotel.*

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