Young ITA Newsletter
Issue 1 – August 2020

Welcome to the inaugural edition of the Young ITA Newsletter. Young ITA counts over 1700 members, spanning countries across the globe. This Newsletter is designed to keep us in touch, help keep you abreast of the latest developments in arbitration, and make you aware of the opportunities Young ITA has to offer. For more information about Young ITA in your region, or to find out how you can contribute to the Young ITA Newsletter and other Young ITA initiatives, please contact any of the editors or associate editors below.

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Editors – Robert Reyes Landicho (Young ITA Chair), Crina Baltag (Young ITA Vice-Chair), Catherine Bratic (Young ITA Communications Chair), Thomas Innes (Young ITA Thought Leadership Chair)

Associate Editors – Young ITA Regional Chairs Samuel Pape, Alexander Leventhal, Sylvia Sámano Beristain, Vinicius Periera, Andres Talavera Cano, Cameron Sim, and Demilade Elemo

I. Upcoming Young ITA events and opportunities

Young ITA Mentorship Program – Applications Due August 15: Young ITA's Mentorship program is a 10-month program designed to bring together young and aspiring arbitration practitioners with leading figures in the arbitration field. The Program is hands-on, offering students and early career professionals an exceptional opportunity to glean valuable knowledge from seasoned members of the ITA, and to forge lifelong connections. Applications for this year's Mentorship Program are due on August 15, and any Young ITA member may apply. For more information, click here.

II. Regional News and Updates

1. *United Kingdom* – By Eleanor Scogings (Associate, *Lalive*)

Arbitration in the UK is currently undergoing two noteworthy and welcome developments: (i) the new pledge for greener and more environmentally friendly arbitration; and (ii) the increased awareness of, and commitment to, diversity in arbitration in the UK.

a. The Green Pledge

We are living in an era where there is an increased awareness of the effects of climate change and the need to actively address environmental concerns. Environmental activist Greta Thunberg's campaign has gained international recognition, placing environmental issues at the forefront of our minds. Users of arbitration and arbitration practitioners are not immune to these pressing issues, and dispute resolution, like every other human endeavour, has an environmental impact. Lucy Greenwood, an experienced and independent arbitrator based in the UK, recently launched the Green Pledge; a well-received initiative that "outlines concrete steps that each of us can take which will reduce the impact of each and every arbitration upon the climate." The arbitration community has welcomed the pledge, which invites arbitration practitioners and users to commit to, amongst other things, questioning the need to travel via aeroplane and using video technology instead, and discouraging the use of hard copy bundles in the hearing room. The Green Pledge is just one element of the huge momentum surrounding sustainable development goals — a key focus of the arbitration community, both in England and Wales and internationally.

b. Enhancing Diversity in Arbitration

The need for diversity in arbitration remains acute. Arbitrations seated in England and Wales often involve disputes with diversity in geography, sector, and between the parties. The arbitration community is facing new challenges, requiring its participants to adapt in order to serve new users in new fields of arbitration, including financial institutions and human rights actions. Widening the pool of arbitration practitioners and arbitrators will help to legitimise arbitration. Arbitration institutions, including the London Court of International Arbitration (LCIA), have recently taken positive steps to promote diversity. The LCIA Annual Casework Report 2018 noted that women represented 43% of all arbitrators selected by the LCIA Court in 2018. However, while the LCIA has demonstrated its commitment to diversity, only 23% of all appointments in LCIA arbitrations in 2018 were women. Continued development cannot therefore come from arbitral institutions alone. Indeed, the arbitration community in the UK is becoming increasingly aware of the need to present to our clients diverse candidates for arbitrator appointments. We must continue to embrace and support all forms of diversity,

including, but not limited to, gender and socio-economic diversity and diversity in age and race, both in the UK and internationally.

For a more detailed discussion on these issues and a broader consideration of whether arbitration is sustainable, please see Sophie Lamb QC's article, Is Arbitration Sustainable?

2. Continental Europe – By Alexander G. Leventhal (Young ITA Chair for Continental Europe & Senior Associate, Quinn Emanuel) and Luka Groselj (Associate, Schellenberg Wittmer)

Developments in Continental Europe's myriad jurisdictions have been many. In this brief summary, we concentrate on those in the region's French and German speaking jurisdictions.

a. *France*

French courts have rendered a number of decisions of interest in the last 12 months. Two of interest are detailed below:

- *In a decision rendered in September 2019, the Paris Court of Appeal was seized with a request to annul an arbitral award rendered pursuant to the Energy Charter Treaty ("ECT") on grounds that the tribunal did not have jurisdiction to rule on the claimant's claim due to his purported failure to have made an investment.[1] The Court referred the question of treaty interpretation to the Court of Justice of the European Union ("CJEU"), even though neither the respondent State (Moldova) or the investor's State (Ukraine) are members of the European Union. According to the Court, the CJEU had jurisdiction to rule on interpretation by virtue of Article 267 of the Treaty on the Functioning of the European Union because the EU is itself a party to the ECT.*

- *On 30 October 2019, France's Supreme Court clarified when an arbitrator's prior representations as counsel may give rise to annulment of an arbitral award.[2] The Supreme Court found that a prior, public representation did not give rise to a ground for annulling the award where that representation, which occurred prior to the arbitration, was open and notorious. However, it found that a prior, non-disclosed, minor representation and a larger, ongoing representation material to the arbitrator's firm – both for an affiliate of one of the parties to the arbitration – did give rise to annulment of the award.*

b. *Switzerland*

On 19 June 2020, the Swiss Parliament enacted a revision of the Swiss arbitration law that governs international arbitrations seated in Switzerland. The revision aims to codify the case law of the Swiss Supreme Court, clarify open issues (e.g. on the relevant point in time for the determination of the international character of a dispute), increase party autonomy, and improve the wording of the Federal Private International Law Act so as to make it more user-friendly.

1 CA Paris, 24 September 2019, No. 17/14143.
2 Cass., Ch. Civ 1, 3 October 2019, No. 18-15756.

Proposed modifications included the following:[3]

The possibility to include arbitration agreements in unilateral arbitration agreements which are primarily found in last wills, bylaws and trusts.

Giving tribunals and parties in arbitrations seated outside Switzerland access to Swiss state courts (i.e. the juge d'appui) for interim relief or the taking of evidence in aid of such foreign arbitration.

The possibility to submit legal briefs to the Swiss Supreme Court in English.

Pending review of this proposal, Switzerland's Supreme Court continues to issue decisions of interest. For example, in April 2019, the Supreme Court upheld a decision of a lower instance state court by which an arbitration agreement had been extended to a non-signatory third party on the ground that it had intervened in the performance of the main contract. The Supreme Court confirmed the lower court's decision and held that where a non-signatory party to the arbitration agreement is involved in the performance of a contract and shows, by its conduct, that it intends to be party to the contract and the arbitration clause, an arbitration clause can bind non-signatories under Article II of the New York Convention. Furthermore, the Supreme Court found that the formal requirements of Article II(2) did not bar a tacit prolongation of the agreement and the arbitration clause contained therein.[4]

c. ***Germany***

German courts have also issued several decisions of note:

In a decision rendered in October 2018, the German Federal Court of Justice held that an arbitral award disregarding the res judicata effect of a previous decision is contrary to German procedural public policy and thus must be set aside. Under German procedural law, the extent of an award's res judicata effect depends on the matter in dispute, which is determined by the claimant's prayers for relief and not by the reasoning set out in a court judgment or arbitral award. Notably, this approach in determining the matter in dispute differs from the one taken in common law jurisdictions, where the reasoning of the award can itself have res judicata effect.[5]

In February 2019, the Higher Regional Court of Berlin decided that a contractual penalty interest rate of 0.5% per day, which amounts to 180% per year, violates German public policy. As a result, the Court refused recognition of the award rendered by an arbitral tribunal acting under the auspices of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation. The Court examined the requirements for recognition in Germany as set out in the German Code of Civil Procedure and the New York Convention and held that the amount of the contractual penalty interest rate was so egregiously high that it amounted to usury, rendering the clause void. Moreover, the Court did not consider itself empowered to reduce the penalty interest rate to an appropriate level, as this would constitute a decision going to the merits of the arbitral award, which is prohibited by the German Code of Civil Procedure.[6]

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3 A more detailed overview of the proposed changes is available at this link (last accessed 2 December 2019).

4 Supreme Court Decision 4A_646/2018 of 17 April 2019; a commentary of this decision is available at this link (last accessed 2 December 2019).

5 Docket No. I ZB 9/18 of 11 October 2018, German Federal Court of Justice.

6 Docket No. 12 Sch 5/18 of 7 February 2019, Higher Regional Court of Berlin.

3. ***Mexico and Central America***

By Sylvia Sámano Beristain (Young ITA Chair for Mexico and Central America & Secretary General at the Arbitration Center of Mexico), Andres Talavera Cano (Young ITA Chair for South America) and country authors as indicated below

a. ***Mexico***

By The Arbitration Center of Mexico – CAM

Mexico continues on a constant path to be a recognized seat for arbitration in the region.

There have been judicial decisions regarding the enforcement of awards, the validity of arbitration agreements and the recognition that the decision of referring a controversy to an ADR procedure is a right that has to be respected by the courts. The Arbitration Center of Mexico ("CAM") has a recognized practice in the administration of arbitrations in English and Spanish; additionally it is contemplated to strengthen other services like the appointment of experts, especially on dispute board mechanisms, which are gaining importance in the country. The institution is preparing to issue a set of mediation rules during the next year and, by this, complete the spectrum of ADR services.

b. ***Costa Rica***

By Karima Sauma (*Young ITA Mentorship Chair & Executive Director of The International Center* for Conciliation and Arbitration – *CICA*)

CICA has been leading the ADR movement in Costa Rica and the region for more than twenty years. Our vision for the future involves improving our services, expanding our reach, and liaising with the government and other institutions that share our mission. Regarding our case-management services, we will continue to incorporate the latest technology to improve the way that we carry out arbitration and mediation processes. For example, last year, CICA became the first Latin American arbitral institution to sign a cooperation agreement with Arbitrator Intelligence. This allows CICA to use the Arbitrator Intelligence Questionnaire ("AIQ") to promote diversity, accountability, and transparency in international commercial arbitration. Additionally, our new Rules of Arbitration – which entered into force earlier this year – reflect international best practices and combine this with CICA's more than two decades of regional experience to improve existing services while also incorporating innovative procedures that benefit the parties and the tribunals. We have also made an effort to diversify our roster of arbitrators and use more data-driven tools to create better services.

c. **Honduras**

By Jose Emilio Ruiz Pineda (*Legal Assistant at Central-Law Honduras*) –

"The most effective way to protect your investments in Honduras, and its recent nuances"

Arbitration as a conflict resolution system has been rapidly evolving in Honduras. Amidst political uncertainty, investors are looking for safer and more effective ways to protect their investments. As a response to this the Honduran Government is aware of this and, being consistent with its business and investment policies, has signed "The United Nations Convention on International Settlement Agreements Resulting from Mediation," also known as the Singapore Convention on Mediation, which demonstrates Honduras's commitment to

becoming a friendly state for ADR methods, which in turn assures investors that solutions are in place.

The principal basis for arbitration in Honduras resides in the Constitution of the Republic of Honduras in its Article 110, which states, “No natural person, who has the free administration of their property, may be deprived of the right to terminate their civil matters by transaction or arbitration.” Furthermore, Honduras has ratified several international treaties such as the "Convention on the Recognition and Enforcement of Foreign Arbitral Awards” (the New York Convention) and the “Inter-American Convention on International Commercial Arbitration” (the Panama Convention).

Because arbitration is a faster process, new laws such as “The Law of promotion of the Private Public Alliance” (Decree No. 143-2010) and the “Law for the promotion and protection of investments” (Decree No. 51-2011) mandate arbitration for all conflicts arising from private public alliances and investment contracts made in the country.

Most international commercial contracts we see in Honduras contain arbitration clauses in case of conflict. The applicable law is the “Conciliation and Arbitration Law” (Decree No. 161-2000), which is based solely on the UNCITRAL model.

As for procedure: if it’s ad-hoc, it would be chosen by the parties; and if it’s institutional, it would go by the “Rules of the Center for Conciliation and Arbitration of the Chamber of Commerce and Industry of Tegucigalpa or Cortes," depending on the claimant’s place of business and the specific clause (most arbitrations take place in the capital Tegucigalpa).

Concerning the amparo action in Honduras it can only be filed against resolutions issued by public officials or state authorities. To avoid obstructions in arbitral proceedings, annulments may only be brought before another Arbitral Tribunal installed within the same Center where the award was rendered, the aforementioned will need to be previously agreed upon by the parties. This would in turn immunize the process from the amparo’s action since it is not rendered by public officials or state authorities.

4. Brazil

By Vinicius Pereira (Young ITA Chair for Brazil & Partner, Campos Mello Advogados)

Arbitration continues its path of strong growth in Brazil. In September, the Brazilian President issued a Decree regulating arbitration of disputes involving the Public Administration related to infrastructure projects — ports, roads, railways, waterways and airports. According to the Decree, arbitration may be used by the federal government and its entities to settle disputes with infrastructure operators, such as concessionaires, permittees, lessees of public facilities, authorized entities or port operators. Disputes regarding the economic-financial balance of agreements, the calculation of indemnities arising from the termination or assignment of agreements, and alleged breaches of contractual obligations by either party may be submitted to arbitration.

This Decree follows a trend in Brazil that started in 2015 when the Brazilian Arbitration Act was amended to officially allow the Public Administration to use arbitration as a dispute resolution method. In line with this, in the last year the States of Rio de Janeiro and São Paulo have issued rules regarding arbitration related to their disputes and the Federal Law 13,867/2019 allows arbitration in real estate appropriation disputes.

On October 10, 2019, there was a #YoungITATalks event in São Paulo, hosted by L.O. Baptista Advogados. The topic was the "Deliberations of the Arbitral Tribunal" and the panellists were very famous Brazilian arbitrators: Adriana Braghetta, Carlos Eduardo Stefen Elias and Mariana Conti Craveiro. The event discussed the dynamics of the Arbitral Tribunal's deliberations, the role of arbitrators and which flaws may affect the final award of each case. Considering there are no guidelines about these deliberations and the parties and attorneys have no access to the internal tribunal's deliberation, the event was very interesting for the practitioners. (*Editor's note:* A complete report has been posted on the KluwerArbitrationBlog.)

5. South America (Spanish-Speaking Jurisdictions)

By Andres Talavera Cano (*Young ITA Chair for South America*) and country authors as indicated below

a. Argentina

By Arbitration and Mediation Business Center

We are facing an increasingly favorable context for the development and growth of ADR in Argentina. The enactment of the International Commercial Arbitration Law and recent statistics demonstrate the expansion of mediation institutes and arbitration in our country.

As an Arbitration and Mediation Business Center, our aim is to accompany and promote this growth. We believe that our value lies in the professional quality of the arbitrators and mediators who constitute our listings and are the heart of our services. The recent signing of a cooperation agreement with the Belgian Center for Arbitration and Mediation (CEPANI) as well as the incorporation of Uruguayan law firms to our institution are some of the actions we have recently engaged to further expand our professional offer.

b. Bolivia

By The Conciliation and Commerce Arbitration Center of CAINCO – CCAC

In 2015, Bolivia changed its arbitration law. As a result of that reform, any investment related with the State of Bolivia has to include an arbitration clause from one of the Bolivia's arbitration centers.

The CCAC is in a constant process of sophistication and transparency of the process. We were the first ones in the country to have the ISO quality certification. From a technological point of view, we have been progressively including the virtual component in communications with the arbitrators, with each other and with the parties. We plan to launch case management software next year. In addition to that, the CCAC's soft law promotes the incorporation of arbitrators with the highest standards of ethics and professionalism.

c. Chile

By Santiago Arbitration and Mediation Center – CAM Santiago

At present, CAM Santiago is working in the amendment of its domestic arbitration rules. A special commission was established in order to provide a draft that addresses the modern concerns of the arbitration community. CAM Santiago aims to release the rules update in the year 2021.

Regarding the institutional arbitration practice, CAM Santiago has worked in promoting gender diversity. In early 2019, CAM Santiago invited 40 new women practitioners, which accepted to integrate the Center's Arbitration Roster, increasing female participation from 7.29% to 18.34%. Additionally, in 2017, CAM Santiago launched the AJ-CAM Santiago Initiative. It is a group of 22 young arbitration practitioners that act as arbitrators in arbitration proceedings up to 75,000 USD. Under this initiative, CAM Santiago aims to encourage the participation of new generations in the field. As to the national arbitration practice, Chile is a very arbitration friendly jurisdiction. For the most part, CAM Santiago and domestic courts have a sound relationship. When challenged, the majority of awards are upheld by the domestic courts. Furthermore, we have no record of any international arbitration award set aside by the appellate courts."

d. Colombia

By The Center for Arbitration and Conciliation of the Bogotá Chamber of Commerce – CCB

The Republic of Colombia's jurisprudence on annulment of international arbitral awards is, perhaps, one of the most commended and advanced in the Latin American region. Judgments of the Supreme Court of Justice have consistently restricted parameters for the annulment of an international arbitral award solely to "true" international public policy (as provided for in the "Guide on the interpretation of the New York Convention"), beyond traditionally accepted restrictions such as the State's own international public policy. Congress is currently debating a reform of the Domestic and International Arbitration Statute (which was largely-based on the UNCITRAL Model Law when adopted). "Tutelage actions" ("amparo" or "tutela") against international arbitral awards have occasionally been admitted, although, to date, not a single one of these decisions has upheld the request for protection against the international arbitral tribunal or the award. (*Editor's note*: For a discussion of developments in connection with the "amparo" action in various jurisdictions, see this KluwerArbitrationBlog entry reporting on a recent Young ITA Talk.)

By The Arbitration Center of the Chamber of Commerce for Medellin

Because arbitration process development varies in length according to the complexity of each case, the Arbitration Center of the Chamber of Commerce for Medellin designed a virtual platform for parties and arbitrators called Mascinfo. This platform allows participants to access resources from anywhere in the world, streamlining the arbitration process. The Arbitration Center website is a tool of transparency and includes the Center`s statistics and caseload, awards for national arbitrations, a virtual calculator for service fees, and weekly arbitrator appointments. To connect with young practitioners and students, in 2018, the Arbitration Center created a moot court competition for Colombian law students, where they act as counsellors in a simulated arbitration.

e. Ecuador

By AMCHAM – Quito

The strengthening of arbitration, development and economic growth in Ecuador has generated greater diversity in matters that are submitted to arbitration. Commercial, construction, civil and telecommunication issues are the most prominent. Since its creation, the center has focused on meeting the needs of each of its users. This has included moving to the use of state-of-the-art technology that allows for better notification, online audiences and appearance of parties that are located in different parts of the world. The institutional alliances that the center maintains with different actors have been important for the strengthening and dissemination of arbitration

in Ecuador, including by allowing us to involve young practitioners interested in arbitration. Further, the center currently maintains an arbitration mentoring program for women with the support of the Spanish Arbitration Club.

f. Paraguay

By Paraguayan Arbitration and Mediation Center of the National Chamber of Commerce and Services – CAMP

Even though arbitration in Paraguay is not yet a common practice, it is growing and the trend shows that more CAMP arbitration clauses are being included in contracts, some of them related to bid and tender processes, and that the number of cases managed is growing every year. As a daily practice, CAMP uses softlaw instruments, such as the IBA Guidelines on Conflict of Interest in International Arbitration to resolve challenges to arbitrators on the basis of arbitrator conflicts. Apart from that, we are making efforts to include other softlaw instruments, particularly for the receipt of evidence. Likewise, we offer a case management/electronic cases files software (DataScan), a system that allows arbitrators, parties, third parties or clients to have online access of the files and records involving arbitration procedures. Additionally, all hearings are video-audio recorded with transcriptions. We are working on implementing electronic notifications and filings starting in 2020.

g. Perú

By Arbitration Center of the Lima Chamber of Commerce

Due to its adherence to bilateral and multilateral trade agreements and international conventions for the harmonization of national legislations (such as the New York Convention), as well as to its modern legislation on arbitration, Peru is becoming an “arbitration hub”. However, despite the various initiatives undertaken by arbitral institutions and other organizations to promote the adoption of best practices in arbitration, Peru has not been exempted from practices of corruption. To neutralize said malpractices, the Center has adopted several measures to promote integrity and transparency in its administered cases, among which: (i) the rigorous review and update of its roster of arbitrators; (ii) the establishment of the mechanism of confirmation of arbitrators; and (iii) the launch of the *Faro de Transparencia* (link), a modern digital platform, aimed to render publicly available relevant information about arbitrators that conduct cases, as well as the awards (in cases with a public entity) and the court decisions on challenges to awards.

By Centre for Analysis and Conflict Resolution of the Pontifical Catholic University of Peru

It is widely recognized that Peruvian arbitration law is based on the UNCITRAL model law on International Commercial Arbitration, which allows us (the Centre) to incorporate the current trends on international arbitration, locally. In that regard, we have updated our institutional arbitration rules by implementing new procedures in order to be at the forefront of the current trends, considering the extensive use of arbitration in Peru, given the fact that our government has chosen to utilize arbitration in controversies regarding public contracts. Therefore, our rules permit the use of electronic notifications and virtual hearings, which allow us to manage cases faster and more efficiently, avoiding unnecessary costs. Finally, due to the fact that the parties appoint arbitrators who do not belong to our list, we have implemented a procedure to confirm arbitrators in order to review their suitability.

h. Uruguay

By Santiago Gatica (*Associate, Freshfields Bruckhaus Deringer*)

The most notable arbitration development in Uruguay relates to the approval, in July 2018, of the International Commercial Arbitration Law No. 19.636, after almost fourteen years since the first bill was sent to Congress. This law mainly incorporates the 1985 UNCITRAL Model Law on International Commercial Arbitration and some of its 2006 amendments. It finally aligns Uruguay with accepted international legislative standards, although certain provisions were adjusted to reflect the country's traditional private international law principles and judicial practice.

Meanwhile, the most notable decisions relate to two awards rendered last March in cases against Uruguay.

First, Uruguay obtained a favorable jurisdictional award in the investment arbitration commenced by Italba Corporation, a US company, related to wireless spectrum services and assignment of radio frequencies (Italba has now commenced annulment proceedings before ICSID). This is Uruguay's second investment award, after the one rendered in the arbitration commenced by Phillip Morris, and both have been favorable to the State.

Second, a Uruguayan gas distribution company (Conecta S.A.), subsidiary of Brazil's Petrobras, commenced a commercial arbitration seated in Buenos Aires against Uruguay under the Rules of the ICC, claiming that it had the right to terminate the concession and seeking compensation of US$ 57.07 million, due to the country's failure to restore the initial economic balance of the concession affected by certain Argentine measures that restricted the import of natural gas. The tribunal recognized that Conecta had the right to request a renegotiation, but decided that Uruguay's obligation to renegotiate did not imply reaching an agreement, so the tribunal concluded that the country did not breach its obligation and rejected Conecta's claim.

i. Venezuela

By Arbitration Center of the Chamber of Caracas – CACC

Currently, and based on what has been the recent development of the CACC's activity, we can say with particular pride that: (a) there is a considerable increase in the incorporation of arbitration agreements into contracts and diversity in the types of contracts that include it; (b) from the jurisprudence field, there is a positive development of the pro-arbitration principle, high rates of voluntary compliance with awards and a minimal percentage of annulments of awards; (c) likewise, there is a greater specialty and interest in the arbitration field, and ADR in general, by the young professionals of our country, hence the CACC continuously develops workshops and conversations aimed at its promotion, instruction and dissemination. This led the CACC to create an agreement with the Universidad Monteávila and the Center for Research and Studies for Dispute Resolution (Centro de Investigación y Estudios para la Resolución de Controversias – CIERC) the Advanced Arbitration Studies Program (Programa de Estudios Avanzados en Arbitraje – PREAA) to train specialized professionals in this field. The delivery of this program began successfully in January 2019.

A process of revision of the CACC's General Regulations is currently underway to incorporate the regulation of specific aspects, considering developments in the matter at national and international level. In particular, it is of interest for the purposes of the Young ITA to highlight the incorporation of the figure of the arbitral secretary, who is appointed to assist arbitrators in the administrative tasks inherent in a particular case; this contributes organization and efficiency, and contributes to the reduction of the time and costs of the arbitration procedure. The

incorporation of this figure would undoubtedly contribute to the formation of new generations of arbitrators as the secretary had the opportunity to learn from the arbitrators and gain experience in arbitration.

6. ***Asia Pacific***

By Cameron Sim (*Young ITA Chair for Asia & Associate, Debevoise & Plimpton*) and country authors as indicated below

As arbitration continues to grow in use and popularity throughout the Asia Pacific, there have been noteworthy developments in Hong Kong, the People's Republic of China, Singapore, and Australia.

a. Hong Kong SAR

By Benjamin Teo (*Associate, Debevoise & Plimpton*)

Two significant developments in Hong Kong illustrate an increased focus on the manner in which international arbitration is funded.

Third Party Funding

On 1 February 2019, Hong Kong's new law permitting third party funding for arbitration came into force. This change provides opportunities for those previously unable to fund claims or for those seeking to transfer risk to third parties. It also gives arbitration a leg-up over court litigation in Hong Kong, as third party funding is still not obtainable for the latter. The change in law was accompanied by the publication of a Code of Practice for Third Party Funding of Arbitration, which sets out "minimum standards of good practice by third party funders of arbitration." However, no liability attaches to funders for failing to comply with the Code of Practice's requirements. This change brings Hong Kong's arbitration funding environment into line with other key arbitral jurisdictions.

Success Fees

Hong Kong's Law Reform Commission will consult on outcome-related fee structures, or "success fees" for arbitration. Previous consultations by the Commission led to changes such as those to the rules on third party funding detailed above. Hong Kong lawyers are currently prevented from entering into success fee agreements for work on arbitration (and other contentious proceedings). The Commission will consult on the risk and benefits of allowing success fees and outline any legislative or regulatory changes required to effect changes.

b. People's Republic of China

By Jennifer (Yue) Hu (*JD Student, Peking University*)

Interim Measures Arrangement between Mainland Courts and Hong Kong Arbitrations

On April 2, 2019, the Supreme People's Court of the People's Republic of China and the Department of Justice of Hong Kong signed a historic arrangement on interim relief in support of arbitration: the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region (the "Arrangement"). This came into force on October 1, 2019.

Generally, only parties to arbitrations seated in Mainland China and administered by Mainland arbitration commissions could request interim measures from a Mainland court. The arrangement has enabled parties to certain commercial arbitrations seated in Hong Kong and administered by a defined list of institutions to apply through those institutions for interim measures from a Mainland court at any time before an arbitral award is made. These institutes include the HKIAC, CIETAC, and the ICC (Hong Kong branch).

A prospective party may also apply for interim measures before the commencement of arbitration. If granted, the measure will subsequently be discharged if the Mainland court has not received a certifying letter from the relevant institution within 30 days.

This landmark Arrangement affords parties who wish to resolve China-related disputes more choices in their dispute resolution arrangements. Hong Kong becoming the first and the only seat to benefit from such assistance from Mainland courts also enhances its reputation as a leading seat of international arbitration.

c. Singapore

By Yvonne Mak (*Associate, TSMP Law Corporation*)

There have been significant recent developments in the courts, the legislature, and on the international stage.

Cases

In *Swissborough Diamond Mines (Pty) Ltd v Kingdom of Lesotho* [2019] 1 SLR 263, the Court of Appeal heard the second application in Singapore relating to an investor-State arbitral award. Setting aside the award, the Court held that the tribunal (constituted pursuant to a treaty of the South African Development Community) lacked jurisdiction to hear and determine the claim. Separately, the decision in *BNA v BNB* [2019] SGHC 142 was reversed by the Court of Appeal in October 2019. The High Court had found that notwithstanding a reference to "arbitration in Shanghai" in the arbitration agreement, the seat of arbitration was Singapore due to the parties' express choice of the SIAC Rules 2013, and consequently, the proper law of the arbitration agreement was the law of the seat, i.e. Singapore law. However, the Court of Appeal held that the clause clearly intended for Shanghai to be the seat for the arbitration and therefore any questions related to the tribunal's jurisdiction would be for the PRC courts.

Reform to Arbitration Act

On the legislative front, Singapore's International Arbitration Act is undergoing a review, with a series of proposed amendments. The Ministry of Law has concluded its public consultation on these amendments. It remains to be seen if they will be implemented. Key features include: (i) introducing a default mode of appointment of arbitrators in multi-party situations, (ii) allowing parties to request for an arbitrator to decide on jurisdiction at a preliminary stage, (iii) allowing parties to appeal to the High Court on a question of law in an award based on an opt-in mechanism, and (iv) allowing the High Court the power to order costs in certain arbitral proceedings.

Singapore Convention

The United Nations Convention on International Settlement Agreements Resulting from Mediation (also known as the "Singapore Convention on Mediation") was signed by 46 countries in Singapore on 7 August 2019. The Convention will enter into force six months after three

contracting States have ratified it. Intended to facilitate cross-border enforcement of settlement agreements resulting from mediation, the Convention enables settlement agreements that fulfil certain requirements to be enforced directly by the courts of another contracting State. Notably, the UK and the European Union have not signed the Convention, and there are concerns over how it will be implemented and its implications for other forms of dispute resolution.

d. Australia

By Stephanie Brown (*Lawyer, Minter Ellison*)

Australia's highest court recently grappled with the question of interpreting arbitration agreements.

In May 2019, the High Court of Australia ("HCA") handed down its decision in the ongoing dispute between Gina Rinehart, one of Australia's richest citizens, and two of her children, Bianca Rinehart and John Hancock. The HCA decision has emphasised the significance of drafting arbitral clauses with care and provided clarity on circumstances where a third party may be entitled to the benefit of an arbitration agreement.

The first issue before the HCA concerned the interpretation of the arbitral clause in various deeds, which generally provided that "any dispute under this deed" be referred to arbitration. The appellants argued that the deeds were void against them, raising the question of whether validity claims were disputes "under" the deeds. The HCA unanimously dismissed the appeal and found that the dispute as to validity fell within the scope of the arbitration clauses. In reaching this conclusion, the HCA looked towards the background and purpose of the deeds, interestingly observing that the approach in *Fiona Trust* under English law "may not assume much importance for the courts in the future".

The second issue before the HCA concerned third party companies, who were not party to the deeds, applying for orders that claims brought against them be referred to arbitration. The HCA found that the third party companies were persons claiming "through or under" a party to the deed and could therefore rely on the benefit of the arbitration clause. The majority's decision was based on the fact that the rights of respondents under the relevant deeds were an "essential element" to the defence of the third party companies.

7. *Middle East*

By Dilpreet K. Dhanoa (Young ITA Chair for the Middle East & Associate, Squire Patton Boggs)

2019 was an exciting year for the Middle East region. Arbitration continues to grow from strength to strength, and in the fifth iteration of Dubai Arbitration Week which took place from 17-21 November 2019 the success has been even more pronounced.

The DIFC-LCIA and DIAC continue to be popular institutions to settle disputes in the UAE, and the ADGM Arbitration Centre (which partnered with the ICC) opened on 17 October 2018. The number of arbitrations now seated and/or located in the region has grown exponentially, and a number of steps have been taken by several countries to ensure that the region is seen as an arbitration-friendly forum.

a. ***UAE***

The UAE enacted Federal Law No. (6) of 2018: its new Arbitration Law, which follows the UNCITRAL Model Law on International Commercial Arbitration. Enshrined in that statute is recognition of the doctrine of separability and the principle of competence-competence. Amongst a host of changes, the law also clarified the position on parties' rights to waive their rights to arbitration ift they did not raise an objection at the first opportunity in the event the matter is referred to the courts. In a move towards recognising the UAE as an arbitration-friendly country, the law also delegates more powers to the arbitral tribunal, thereby reducing court intervention (particularly in respect of interim measures). The law is effectively designed to support the UAE's unprecedented economic growth and ensure that there continues to be long-term economic investment in the country. It seeks to align the UAE with international best practice, and remains in prime geographical position amongst other international arbitration centres globally.

b. ***Saudi Arabia***

In the Kingdom of Saudi Arabia, the Saudi Centre for Commercial Arbitration (SCCA), which was officially inaugurated in October 2016, is similarly based on the UNCITRAL Arbitration Rules and has been developed in partnership with the AAA-ICDR. The SCCA Rules were drafted at the time to be consistent with the Saudi Arbitration Law issued in 2012, and it is hoped that these positive steps taken signal a desire by the country to be seen as a modern and arbitration-friendly jurisdiction.

c. ***Qatar***

In similar vein, Qatar had also followed suit and a new Qatari Arbitration Law was introduced in 2017, which was again based on the UNCITRAL Model Law.

8. ***Africa***

By Demilade Isioma Elemo (*Young ITA Chair for Africa*) and contributions from Busola Bayo-Ojo (*Abuja, Nigeria*) and Jaqueline Chantelle Santos Ruas Baessa Pinto (*South Africa*)

a. The African Continental Free Trade Agreement

The most significant development on the African continent right now is the African Continental Free Trade Agreement (AfCFTA). Coming into force on 30th May 2019, the Agreement seeks to create a single market for goods and services, facilitated by movement of persons in order to deepen the economic integration of the African continent.

The Agreement contains several Protocols governing the relationship between Member States including: Protocol on Trade in Goods, Protocol on Trade in Services, Protocol on Rules and Procedures on the Settlement of Disputes, Protocol on Competition Policy, Protocol on Investment and Protocol on Intellectual Property.

The Protocol on Rules and Procedures on the Settlement of Disputes applies to disputes between State parties concerning their rights and obligations under the agreement and establishes a Dispute Settlement Body (DSB). Significantly, it indicates various ADR methods, including arbitration, as dispute resolution mechanisms for state-to-state disputes.

Provisions on the resolution of investor-state disputes are currently unavailable, as the negotiations for the Investment Protocol remain ongoing. However, it is expected that the Investment Protocol will be largely based on the Draft Pan African Investment Code (PAIC) which contains standard investment protections including Fair and Equitable Treatment, National Treatment, Non-Discriminatory Expropriation etc. Under the PAIC, investor-state disputes require a mandatory negotiation period before arbitration, which must be conducted at any established African public or private alternative dispute resolution centre.

Despite the existence of various regional initiatives on investment such as the Economic Community of West African States (ECOWAS), Common Market for Eastern and Southern Africa (COMESA), Arab Maghreb Union (AMU), one of the objectives of AfCFTA is providing a unified investment landscape in Africa. In light of this objective, it is still unclear what the decision will be if an "Achmea" type issue arises in a dispute.

b. Angola

In February 2019, an ICC tribunal issued an award of over US$650 million in favour of PT Ventures against Unitel S.A., Angola's largest telecommunications company which is "beneficially owned" by Isabel dos Santos, the daughter of the former president of Angola, and two others. The dispute concerned alleged breaches of a Shareholders Agreement governed by Angolan law. The matter was notable for being the first-ever ICC arbitration to be heard before a tribunal of five arbitrators.

c. Botswana

In a decision seen to be pro-arbitration, the Botswana Court of Appeal in 2019 ruled that a dispute between Russian company Nornickel and Botswana's BCL Group over the failed sale of Nornickel's interest in a mining joint venture, Nkomati, must be brought before the London Court of International Arbitration (LCIA) in accordance with the parties' initial agreement.

d. Cabo Verde

In May 2019, PT Ventures SGPS SA, a subsidiary of Brazilian telecommunications company Oi SA, settled its ICC and ICSID arbitration claims against the government of Cabo Verde (see *PT Ventures SGPS SA v Republic of Cabo Verde*, ICSID Case No. ARB/15/12). The company dropped both cases for the sum of $26.3 million after divesting its 40% stake in Cabo Verde Telecom (CVT), the country's main telecoms services provider. The shares were sold to Cabo Verde's National Social Security Institute and the state-owned National Airport and Aerial Security Company.

e. Djibouti

On 12 April 2019, the Republic of Djibouti signed the ICSID Convention in its drive to promote investment in Djibouti, create employment opportunities for youth and women, and to boost economic growth in the country.

f. Côte d'Ivoire

In 2018, Côte d'Ivoire adopted a new investment code, which changed the investment dispute settlement mechanisms in the country. Article 50 of the code requires an attempt for disputes to be amicably settled within 12 months, failing which UNCITRAL conciliation rules apply. Parties also have the option to submit their dispute to arbitration by the Arbitration Centre of the Common Court of Justice and Arbitration (CCJA) of the Organization for the Harmonization of

Corporate Law in Africa (OHADA). Conspicuously, this is a departure from the previous consent to the jurisdiction of ICSID. The Code also expressly provides for corporate social responsibility obligations for investors.

In 2019, the Ivorian government made another arbitration development via its Public Procurement Code. The Code provides that all disputes arising out of the performance or settlement of public procurement contracts may be submitted either to the courts having jurisdiction in administrative matters or to an arbitral tribunal.

g. Ethiopia

On 14 July 2019, the Cassation branch of the Supreme Court of the Federal Democratic Republic of Ethiopia refused the application of Agricom International for the annulment of an arbitral award made by a GAFTA (Grain and Feed Trade Association) Appeals Tribunal, in favor of the Ethiopian Trading and Business Corporation (ETBC). This decision was significant, as it came on the heels of the decision by the same court in 2018, which created furore in the international arbitration community over the finality of arbitral awards in Ethiopia. In the 2018 case, *Consta JV v Chemin de Fer Djibouto – Ethiopien*, the Supreme Court held that it had jurisdiction to review an arbitral award and annulled an arbitral award issued by the Permanent Court of Arbitration under the European Development Fund Arbitration Rules for error in the interpretation and application of Ethiopian law. Fast forward to 2019, Agricom asked the court to rely on its own precedent to be the final arbiter of all questions of Ethiopian law. The Supreme Court clarified that it exercised jurisdiction in the *Consta* case because the legal seat of the arbitration was Addis Ababa, although the case was administered by the PCA and heard in The Hague. In this case however, the legal seat of the tribunal was in London, not Addis Ababa, which meant that the English courts had exclusive supervisory jurisdiction.

h. Gabon

On 13 September 2019, the ICC Court of Arbitration in the case of *Eurofinsa v the Gabonese Republic* dismissed the bulk of a claim of almost €67 million from the Spanish construction group against Gabon. The company had sued Gabon for failing to pay for the rehabilitation of the Omnisport Omar Bongo complex in Libreville and the construction of national road.

i. Kenya

On 30 May 2019, the Kenyan High Court in *World Vision International v Synthesis Limited* made a pro-arbitration decision when it declined jurisdiction and held that a dispute between a project architect and the project contractor be settled by arbitration in accordance with the underlying contract.

j. Malawi

The Malawi government is suing TotalFinaElf group before an UNCITRAL arbitration tribunal seated in South Africa over its alleged failure to honour a contractual commitment to pay certain rebates on fuels in arrears to both the government and Prima Fuels. Malawi initially instituted the action in the Commercial Division of the High Court of Malawi to secure payment of rebates, however the court ordered arbitration between the parties in accordance with the terms of their agreement.

k. Mozambique

On 24 October 2019, an ICSID Tribunal issued an award based on the South Africa-Mozambique BIT in the case of *Oded Besserglik v Republic of Mozambique.* The Claimant alleged that the government wrongfully expropriated his investment by violating agreements relating to the allocation of shares and profits in a partially State-owned joint venture, which fished for deep- and shallow-water prawns. Unfortunately, the BIT under which the claim was made had not entered into force. This was confirmed by Mozambique and South Africa. The Tribunal was therefore constrained to dismiss the claim as it lacked jurisdiction to hear it.

Mozambique also prevailed in *CMC Muratori Cementisti CMC Di Ravenna SOC Coop. et al v Republic of Mozambique*, another ICSID case, brought by an Italian construction group following a dispute over a highway reconstruction project. Mozambique had attempted to argue that the Tribunal had no jurisdiction as the underlying treaty, the Italy-Mozambique BIT was rendered invalid by the "Achmea" decision of the European Court of Justice, where it was held that arbitration clauses in investment treaties between European Union Member States are precluded under EU law. Mozambique's reasoning was that Italy signed the "Declaration on The Legal Consequences of the Judgment of The ECJ In Achmea" of 15 January 2019, where it was stated that the judgment extended to the Energy Charter Treaty, which includes non-EU Member States. In the same vein, the legal consequence of the ECJ judgment should apply to the Italy-Mozambique BIT even though Mozambique is not a member of the EU. The Tribunal, however, noted that the January declaration related to intra-EU arbitration, and "[n]either the Achmea decision nor the joint declaration appears to this tribunal to invalidate the consent of the parties to an extra-EU treaty to arbitrate as of the date when the agreement to arbitrate became binding on both parties".

l. Nigeria

Nigeria's Arbitration and Conciliation Act (Repeal and Re-Enactment) bill passed the Senate, marking progress in its journey to be effectively passed into law. The bill encapsulates the following introductions to Nigerian law on arbitration:

- recognition of third-party funding;
- appointment of an emergency arbitrator or a substitute arbitrator for urgent reliefs by parties;
- immunity of arbitrators from liability for acts and omission done in discharge of their functions;
- empowerment of arbitral tribunals to make interim or supplementary orders;
- obligation on applicants seeking for an order to stay proceedings pending arbitration to establish readiness and willingness to do necessary things for the arbitration to occur;
- recognition by Nigerian courts of interim measures irrespective of the country issued; and
- expansion of the requirement that an arbitration agreement must be in writing to include electronic documents.

Further, on 7 June 2019, the Nigerian Supreme Court issued a landmark decision that overturned the much-criticised decision of the Court of Appeal in the case of *Dr Charles Mekwunye v Christian Imoukhuede*. The lower court had set aside an arbitral award on the grounds (inter alia) of a pathological arbitration clause wherein the arbitration institution was wrongly referred to as "Chartered Institute of Arbitrators, London, Nigeria Branch", instead of "Chartered Institute of Arbitrators, UK, Nigeria Branch". The court had held that that since there was no body in existence known as "Chartered Institute of Arbitrators, London, Nigeria Branch", the Award must be set aside. In disagreeing with this position, the Supreme Court upheld the

award on the reasoning that “since parties are bound by the terms of their contracts, they must also be bound by errors and mistakes they have condoned and waived”. The Supreme Court stated that it was unreasonable to infer that the arbitral institution was a non-existent body simply because the word “London” was used instead of the “United Kingdom”.

A major development in arbitration in Nigeria in the past year concerned the decision of the English courts in *Process & Industrial Developments Ltd v The Federal Republic of Nigeria* [2019] EWHC 2241 wherein it upheld an arbitral award of $6.6 billion against Nigeria. The award is now worth $10 billion as a result of accrued interest. The Nigerian government had been brought before the arbitral tribunal for reneging on its obligation to supply gas to P&ID under an agreement to build and operate an Accelerated Gas Development Project. The amount of the award garnered much public outrage for being excessive as the expenditure of the company in Nigeria was $40 million, and the award represents a fifth of the country’s foreign reserves. The outrage heightened when evidence of alleged fraud and corruption was found against the Irish company. Nigeria is currently challenging enforcement of the awards in the courts of England and the United States of America.

m. South Africa

In 2017, South Africa passed International Arbitration Act, which largely incorporates the UNCITRAL Model Law.

Recently, the Supreme Court of Appeal of South Africa in *Atakas Ticaret VE Nakliyat AS v Glencore International AG (768/2018)* [2019] ZASCA 77 (30 May 2019) decided that it was within the discretion of the court to permit or refuse joinder in terms of s5(1) of the Admiralty Jurisdiction Regulation Act, 1983 as such discretion was not affected by the International Arbitration Act, 2017.

Briefly, the facts concerned a Turkish company, Atakas, which chartered a vessel to carry a consignment of coal, purchased from Glencore International AG (Glencore), from South Africa to Turkey. After loading of the consignment, an explosion occurred and Atakas instituted a delictual action in personam against the operator of the coal terminal, out of the High Court of South Africa, in the exercise of its admiralty jurisdiction and applied to join Glencore. Glencore stated that the sale agreement for the coal contained an arbitration agreement and the court was required to stay the proceedings and refer the matter to arbitration unless it were to find such agreement to be null and void as provided under the new International Arbitration Act. The High Court agreed, concluding that as a result thereof any joinder would be “futile”. However, the Supreme Court departed from this view, stating that the court’s discretion to join Glencore was not affected by the new Act and joined Glencore as a defendant in the action.

n. Zambia

The Zambian government has been taken to international arbitration by Vedanta Resources following the seizure of its copper mines in the country for allegedly breaching environmental and financial regulations. The arbitration is based on a shareholder agreement with the Zambian government, which provides for disputes to be submitted to international arbitration in Johannesburg. On 24 July 2019, the South African High Court in the case of *Vedanta Resources Holding Limited v ZCCM Investment Holdings Plc* granted an anti-suit injunction in support of the arbitration agreement.

III. JOB POSTINGS

#CAREERS IN ARBITRATION

The job postings below are provided by #CareersInArbitration, a resource for finding and posting jobs in the arbitration field. #CareersInArbitration regularly posts openings on their LinkedIn and Twitter pages. If you have a job posting that you would like to share with Young ITA members, please email Young ITA Thought Leadership Chair Thomas Innes (tinnes@steptoe.com).

1. Permanent positions

Asian International Arbitration Centre
Case Counsel (China)
Deadline: August 15, 2020
https://www.linkedin.com/posts/asian-international-arbitration-centre_aiac-china-international-case-counsel-job-activity-6691149937813651457-OY5I

SIAC
Associate Counsel
https://www.siac.org.sg/2014-11-03-13-33-43/about-us/open-position/464-associate-counsel

Deputy Head (South Asia)
https://www.siac.org.sg/2014-11-03-13-33-43/about-us/open-position/479-deputy-head-south-asia

ICC
Internal Communications Officer (Paris)
Deadline: August 25, 2020
https://iccwbo.org/careers/job-opportunities/internal-communications-officer-cdi-global-communications-paris/

2. Internships

(most accepting applications on a rolling basis)

Al Tamimi & Company
Arbitration Internship (Dubai)
Deadline: January 31, 2021
https://www.allhires.com/tamimi/PositionDetail.aspx?id=393&a=&n=&returl=%2ftamimi%2f

ARBITRADE:
Internship (Ukraine)
https://bit.ly/37z6ZqM

Bredin Prat
Arbitration Internship
Immediate/September 2020 start
En: https://app.box.com/s/4vuoqfqiftuw1jk243uqtynfaortxqyi
Fr: https://app.box.com/s/119ljwr6v9vfd7kmzctlqdl15kt1y4wg

Dechamps International Law:
Internship (Buenos Aires and London)
https://bit.ly/2tousMO

Dechert LLP
AI Visiting Advisor Program (Washington, DC)
https://www.dechert.com/careers/experienced-lawyers/international-visiting-advisors.html

Debevoise & Plimpton:
IDRG Internship (London)
International Disputes Support Lawyer (London)
Recruitment opens September 2020
https://www.debevoise.com/careers/london

Fietta LLP
Internship Program (London)
https://bit.ly/2Qncrrh

Freshfields Bruckhaus Deringer:
Internship (Dubai)
https://bit.ly/2ZSJV3U

Herbert Smith Freehills:
Internship (Singapore)
https://bit.ly/37A4xQZ

Lalive:
Associate (Zurich, Geneva or London)
Internship (Geneva)
https://bit.ly/35i5Gex

Three Crowns LLP:
Internships (London, Paris and Washington, DC)
https://bit.ly/2QpMaZn

Shearman & Sterling LLP:
Internship (London)
https://bit.ly/36o1pYj

Squire Patton Boggs:
Numerous opportunities
https://www.squirepattonboggs.com/en/careers/opportunities/student-and-graduate/international-dispute-resolution-opportunities

Volterra Fietta:
Internship (London)
https://bit.ly/36ojZPQ

WilmerHale:
Internship (London)
https://bit.ly/35nDTt3

IV. Meet a Young ITA member – Subhiksh Vasudev

- **How did you get involved in arbitration?**

Answer: As a law student, I was drawn into international law moot courts, primarily due to my university's poor track record in those competitions. I took it as a personal challenge and we became the first team ever from my university to qualify for the global rounds of the Jessup moot court in 2010. While this gave me great personal satisfaction, I felt there was room for improvement. I decided to further explore international law and to find an opportunity to moot again. It was in April 2010 that I came across the FDI International Arbitration Moot and with the help of another friend, we registered for the competition. This is how I first got involved with arbitration.

I was fascinated by the procedural and substantive aspects of investment arbitration and more importantly, by the style and level of the written and oral advocacy in international arbitration proceedings. The sophistication of international arbitration was also very appealing and after our efforts yielded a successful performance in the competition, I was confident of taking that experience and applying it to my future arbitration practice in India.

- **How did you choose your career path?**

Answer: I think it was the other way around! From 2004 to 2008, I studied engineering at the bachelor's degree level. It was around the same time that my father was involved in a civil litigation. He was the plaintiff in a suit for specific performance of a flat-purchase agreement and I regularly used to accompany him to courts and lawyers. This exposed me to various facets of the law – some good, some bad. What stayed with me, however, was the power that a lawyer wields in a justice delivery system. In 2008, although I had an on-campus placement in hand, I felt my analytical skills and scientific aptitude would be better utilized in studying law than writing codes! That's how my journey in law began. Immediately after graduating from law school in 2011, I was clear about setting up my own independent law practice in Delhi.

- **And how did you decide to pursue a career in international arbitration?**

Answer: My interest in pursuing an LL.M. in international arbitration was always there but due to financial constraints, I could never seriously take it further. In November 2016, I met Prof. Gabrielle Kaufmann-Kohler in Buenos Aires while arbitrating the global rounds of the FDI moot. Our conversation, albeit brief, was very enriching and motivated me to apply for the Geneva MIDS LL.M. I was aware of the established reputation of the MIDS LL.M. program and felt it was the right time to pursue my longstanding dream. Fortunately, one of my clients even offered to pay for my tuition fees and living expenses, all free of cost! I could not have asked for better circumstances to take the next step. During the MIDS LL.M., I gained specialized academic training from some of the finest practitioners in the field. A solid foundation in international investment and commercial arbitration coupled with my past experience in India motivated me to apply my skills at the highest level and pursue a career in international arbitration. Since graduating in 2018, I have worked in LALIVE, Geneva and Quinn Emanuel, Paris and aim to build a longlasting career in international arbitration.

- **What is the most exciting part of your Indian and international arbitration practice?**

Answer: As a lawyer in India, it would undoubtedly be the interaction with clients from all walks of life and the uniqueness of each of their cases. I found it particularly exciting to discuss with the Managing Director of a leading engineering company the strategy for an ongoing arbitration and then, to meet an individual with limited means who wanted to secure bail for his son – all in the span of a single day. The other exciting aspect of my practice was the diversity of practice areas that would range from constitutional law to contractual matters or from civil law to criminal law and so on. To study these laws and to catch the pulse of the court or a tribunal while explaining the impact of those laws on a case, were the most interesting aspects of my practice. International arbitration is another form of dispute resolution, like litigation, and has similar aspects to its practice. It gives you the opportunity to work for clients from all over the world, to formulate effective strategies to solve their problems depending on the nature of the dispute and the applicable law, to use commercial awareness and innovative ideas in presenting complex cases to a tribunal, and, above all, to make friends from all over the world. While I'm still trying to find my feet in this arena, the most exciting parts of my journey so far have been attending hearings and watching seasoned practitioners live in action.

- **Is there anyone who has mentored you or inspired you in the arbitration field?**

Answer: I consider Ms. Laura Halonen as my mentor in international arbitration. She was the counsel at LALIVE at the time I was interning there. As my senior, she showed belief in me and gave me opportunities to put my academic training and professional skills to practice. In fact, I learned the importance of man-management and case management under her mentorship. She has played a pivotal role in providing continuous career guidance and I always wish the best for her.

- **How long have you been involved in Young ITA? How did you first get involved?**

Answer: I became a member of Young ITA in early 2020 when I came across the opportunity to be a reporter for one of its #YoungITATalks events in Paris. Mr. Alexander Leventhal, who is a senior associate at Quinn Emanuel in Paris, was kind enough to select me and another colleague from the office to cover the event. Our joint report was later published in the Young ITA News & Notes this year.

- **What have you gained by being a member of Young ITA?**

Answer: I think Young ITA is definitely one of the few platforms where young aspiring international arbitration practitioners like myself get to share ideas and network with experienced practitioners at the same time. As a reporter of the #YoungITATalks events that I mentioned previously, I had a great experience in reaching out to the various panelists and compiling their inputs to prepare an event report. I got the chance to communicate with these professionals one-on-one, demonstrate my writing skills, and to expand my network of people during the conference. The recent announcement of the Young ITA Mentorship Program is another great opportunity for young members to find suitable mentors within the Young ITA community and gain from their wisdom and life experiences.

- **What advice do you have for other young practitioners starting a career in arbitration?**

Answer:

1. Prepare yourself – Your academic training, professional experience, and personal skills are crucial in this field. It is already very competitive and entering waters without proper preparation is not an excuse.

2. Have the Right Mindset – Think of yourself as a horse training for long-distance running. You're in for the long haul so be patient, be willing to persevere, and learn as much as you can. Soon, the right time and opportunity will come and you will catch speed like none other!

3. Find a good mentor – I cannot overemphasize the importance of a good mentor early in one's career. Always choose a boss over a job.

4. Be compassionate and humane to others