

## **LITIGATION**

**Guatemala:**

**Court injunctions in aid of arbitration**

*Authors: Juan José Porras, Lourdes Maria Rodriguez Tobias*

**March 15 2011**

*(Source: International Law Office)*

*(Read article: <http://www.internationallawoffice.com/?i=55592&l=7F4GXWH>)*

Guatemala's increased use of alternative dispute resolution is part of a trend not only elsewhere in Central America, but throughout the world. However, in order to be truly effective, such procedures require the possibility of judicial involvement in issuing preventive injunctions.

## **Ireland:**

### **Recent case revisits damages principles**

*Author: Gearóid Carey*

**March 15 2011**

*(Source: International Law Office)*

*(Read article: <http://www.internationallawoffice.com/?i=55592&l=7F4GXWS>)*

In a recent High Court decision, a dairy farmer was awarded €304,320 in damages arising from the failure of the defendants to return his livestock pursuant to an agreement. In his decision, the judge identified the basic principles applicable to contractual damages under Irish law. Only net losses are recoverable and there is a duty to mitigate loss, although reasonable costs incurred in doing so are also recoverable.

## **Mexico:**

### **Revised regulations clarify courts' role in arbitration**

*Authors: Luis Enrique Graham, Salvador Fonseca*

**March 15 2011**

*(Source: International Law Office)*

*(Read article: <http://www.internationallawoffice.com/?i=55592&l=7F4GXWY>)*

A set of significant changes to the commercial arbitration framework seek to improve the regulations on judicial intervention. Among other things, the reform covers the referral of parties to arbitration, the enforcement of interim measures and a new court proceeding to enforce or vacate an arbitral award.

## **United Kingdom:**

### **No Norwich Pharmacal against innocent, mixed-up lawyers**

*Author: Jake Hardy*

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*(Source: International Law Office)*

*(Read article: <http://www.internationallawoffice.com/?i=55592&l=7F4GXXR>)*

A recent case arising out of dispute over control of the Norilsk Nickel mining group suggests, among other things, that applications for *Norwich Pharmacal* orders against solicitors will be treated similarly to applications against banks for disclosure of details of their customers' affairs.

## **Sellers Beware**

*(Source: <http://www.fobnetworking.com>)*

*(To read the case note in full go to:*

*<http://s2.webtemplate.com.au/bridgehead/PiperAlderman/media/files/7416.pdf>)*

A recent case between Angara Maritime Limited v Oceanconnect UK Limited has highlighted the issue of retention of title clauses not providing the protection to a seller as intended according to Maurice Lynch. In this case, the High Court of Justice in England declared that Angara- the owner of the vessel had no liability to Oceanconnect who sold bunkers to the charterers Britannia. This decision was based on the operation of section 25(1) of the Sale of Goods Act 1979 (UK) which protects it from what would otherwise be a claim for conversion. There are equivalent provisions to section 25 of the UK Sale of Goods Act in Australian domestic legislation.

## **BIFA Conditions Upheld in Court of Appeal**

*(Source: <http://www.fobnetworking.com>)*

*(To read a copy of this publication go to <http://www.fobnetworking.com>)*

The Court of Appeal has upheld the validity of the BIFA Standard Trading Conditions in Rohlig (UK ) Ltd v. Rock Unique Ltd. [2011] EWCA Civ 18. The article, entitled "BIFA STC triumph in unpaid invoices case" in the March edition of BIFA news shows that English courts will protect commercial contracts entered into by commercial entities. "This is important for national firms as well for foreign firms who may need to litigate or arbitrate in this jurisdiction in respect of contractual issues", Kay Pysden said.

## **Dispute Adjudicator's Entitlement To Payment And Subsequent Vat Liability In Accordance With The European Vat Package**

**Author:** *Dr. Götz-Sebastian Hök, Berlin*

*(Source: The dispute board federation – [www.dbfederation.org](http://www.dbfederation.org))*

Regarding taxation adjudicators find themselves in a difficult situation. They are subject to taxation in accordance with local VAT laws. However, since 1 January 2010, the so-called "VAT package" rules for cross-border services have a fundamental impact on the VAT issue. The "VAT Package" comprises the Council Directive 2008/8/EC, the Council Directive 2008/9/EC and the Council Regulation (EC) No 143/2008 and has been transposed into the domestic VAT legislation of each Member State. However, the VAT Package will be implemented gradually: 1 January 2010, 1 January 2011, 1 January 2013, 1 January 2015. The basic legal principle of VAT law is simple: Services which are supplied in consideration of payments involve VAT. In any case adjudicators having their relevant domicile or residence within the European Union shall investigate whether the parties do have the quality of an "entrepreneur" in the sense of VAT laws. The parties may either refer to a VAT identification number or other appropriate evidence must be produced. In a nutshell [6], an adjudicator will not charge VAT on its services if parties in adjudication are legal entities or entrepreneurs established within the EU but will need to report the value of the services provided to the domestic tax authorities. As a consequence of the new rules, arbitrators will also need to collect information concerning the VAT numbers of parties. Arbitrators' services to parties having the quality of an entrepreneur and established outside the EU are, as before, exempt from VAT.

### **Can email chains amount to a binding guarantee?**

**Author:** Helen Fairhead

(Source: *International Law Office* )

(Read article <http://www.internationallawoffice.com/?i=55592&l=7F3KGD2>)

Where a contract is for the sale or disposition of an interest in land, or a guarantee, statute requires a signed, written agreement. However, the High Court recently held that a chain of emails was sufficient to constitute a guarantee, even though the alleged guarantors had not signed a final guarantee document.

### **Hungary:**

#### **Court practice in setting aside arbitration awards**

**Author:** Iván Janitsáry

(Source: *International Law Office*)

(Read article: <http://www.internationallawoffice.com/?i=55592&l=7F3KG8A>)

A recent, unpublished study, which was prepared by a Supreme Court judge in order to facilitate the amendment of Hungary's arbitration law, has summarised Hungarian court practice in connection with arbitration. It is particularly valuable because it considers a number of court rulings that are unavailable to the public.

### **Isle of Man:**

#### **Judge clarifies scope of *Norwich Pharmacal* jurisdiction in Isle of Man**

**Author:** John T Aycok

(Source: *International Law Office*)

(Read article: <http://www.internationallawoffice.com/?i=55592&l=7F3KG99>)

The extent of the use of *Norwich Pharmacal* jurisdiction, which enables disclosure orders against non-parties, in the Isle of Man was recently tested before the Isle of Man High Court. The court ruled that *Norwich Pharmacal* orders are for the provision of information rather than evidence and are to be used as a last resort.

### **Jersey:**

#### **'Forum for administration' and 'exclusive jurisdiction' clauses in trusts context**

**Authors:** Steve Meiklejohn, Philip Le Cornu

(Source: *International Law Office*)

(Read article: <http://www.internationallawoffice.com/?i=55592&l=7F3KGAB>)

A recent judgment of Commissioner Clyde-Smith with Jurats Liddiard and Nicolle set aside a service of proceedings on respondents outside of Jersey and stayed the proceedings. The importance of the judgment is the court's consideration of the 'forum for administration' and 'exclusive jurisdiction' clauses in the context of trusts.

**Lithuania:**

**Supreme Court rules on restitution in fraudulent contract cases**

**Author:** *Dalia Foigt-Norvaišienė*

*(Source: International Law Office*

*(Read article <http://www.internationallawoffice.com/?i=55592&l=7F3KGC6>)*

A recent Supreme Court clarifies that the purpose of restitution in the context of a wrongful agreement is to limit the ability of a party acting with wrongful intent and in bad faith from benefitting from such conduct. Consequently, such a party must fully reimburse its contractual counterparty under an annulled contract, whereas a party that has acted in bad faith should not be reimbursed.