

LITIGATION

Austria

Supreme Court confirms suspension of proceedings for similar cases

The Supreme Court recently confirmed that the universal successor of a party to proceedings is regarded as 'the same party'. Where proceedings involving the same cause of action and between the same parties are brought before the courts of different member states, any court other than the

court first seized shall, of its own motion, stay its proceedings until such time as the jurisdiction of the court first seized is established.

Author: Klaus Oblin

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FY8T9D>)

Canada

The Hollinger sealing order – using the *Sierra Club* test to protect settlement privilege

In a recent decision released in the Hollinger Inc Companies' Creditors Arrangements Act proceeding, the Ontario Court of Appeal upheld a sealing order that protects from public disclosure the settlement amounts to be paid until such time as the settlements receive court approval. While in the past settlement privilege has been protected by sealing orders, such cases are uncommon.

Authors: Norm Emblem, Chloe Snider

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FY8TA9>)

India

To what degree should courts intervene when referring matters to arbitration?

The Supreme Court recently reiterated the settled principle of law that when deciding whether an arbitral procedure is to be set into motion, the chief justice must examine and record that a satisfactory arbitration agreement exists between the parties. Only when satisfied that such an agreement exists can the chief justice allow the application and appoint either an arbitral tribunal or a sole arbitrator, as the case may be.

Authors: Saanjh Purohit, Adit Pujari

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FY8TB8>)

Malaysia

Court rules on legal rights of biological parents following adoption

The Federal Court recently held that an adoption granted with the consent of one biological parent without the consent of the other was nonetheless valid. The appeal was dismissed with costs with the consolation that the biological father was restored to the birth register as the lawful father.

However, the court is still reluctant to rule on the religious conversion of children.

Authors: Nahendran Navaratnam, Wye Wah Wong

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FY8TBP>)

United Kingdom

Personal recommendations and suitability under Conduct of Business Rules

A High Court decision, which will be welcomed by private banking clients, highlights the stark difference in approach between the issue of when a bank is liable for advice or recommendations under the Conduct of Business Rules, and the question of whether the same sort of advice or recommendation gives rise to liabilities at common law.

Author: Andrew McGregor

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FY8TC4>)

Luxembourg

Court rules on capital gains on sale of preferential subscription rights

The Luxembourg lower administrative court has clarified the qualification of income derived from the sale of preferential subscription rights by a Luxembourg company. It held that in the absence of rights in the share capital, the preferential subscription rights did not qualify as 'participations' for the purposes of the participation exemption regime.

Author: Alain Goebel

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FYYW79>)

United Kingdom

A perilous path: sharing information while preserving privilege

The much-publicised litigation involving Russian magnates Boris Berezovsky and Roman Abramovich has shed light on the extent to which it is possible to retain privilege over, or otherwise restrict the use of, documents that have been disclosed to third parties. Twists, turns and unforeseen consequences can cause a seemingly risk-free disclosure to undermine critically important privilege.

Author: Matthew Dando

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FYYW7M>)

India

Supreme Court clarifies when an arbitration clause can be invoked

The Supreme Court recently confirmed its view that once a party has finally and fully settled its disputes with another and received the benefits under the settlement, that party cannot later invoke the arbitration agreement in respect of the dispute. The court argued that this would amount to blowing hot and cold at the same time, contrary to the doctrine of estoppel by election.

Authors: Kirat Singh Nagra, Tanuj Bhushan

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FZLYZ1>)

United Kingdom

Common sense counts when construing commercial contracts

The Supreme Court has provided useful guidance on the role of business common sense in construing a clause in a commercial contract, particularly in circumstances where there are competing plausible constructions, neither of which is clearly preferable on the language used alone.

Author: Daniel Hemming

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FZLZ03>)

British Virgin Islands

Case law update

The BVI Commercial Court recently handed down judgment in the claim brought by the liquidators of a BVI fund which invested in Bernard Madoff's investment vehicle. In other recent cases, the Commercial Court ruled on the discounted valuation of shares following a Section 176 forced redemption, clarified the conditions for a company's restoration following dissolution and restated the rules on when a foreign judgment creates an issue estoppel.

Author: Phillip Kite

(Read article <http://www.internationallawoffice.com/?i=55592&l=7G08WS0>)

Canada

Appeal court dismisses C\$36 million environmental class action award

The Ontario Court of Appeal has reversed a trial award to thousands of Ontario residents who had sued Inco for property devaluation caused by soil contamination. The decision limits claims of private nuisance and *Rylands v Fletcher* strict liability, and clarifies the application of limitation periods for class actions.

Author: Nalin Sahni

(Read article <http://www.internationallawoffice.com/?i=55592&l=7G08WS6>)

Cyprus

Supreme Court clarifies meaning of 'third party' in compulsory insurance

In a recent decision, the Supreme Court ruled that although insurance companies are liable to cover a policyholder against damages to persons or to property of third parties that result from the

policyholder's negligence, they are not liable to compensate the policyholder if he or she is not driving the vehicle and suffers injury as a result of the negligence of the driver.

Author: Constantinos Kourides

(Read article <http://www.internationallawoffice.com/?i=55592&l=7G08WSC>)

India

Enforcing foreign awards: Supreme Court widens scope of 'public policy'

The Supreme Court recently examined the scope of the expression 'public policy' under the Arbitration and Conciliation Act 1996, in relation to the setting aside of a foreign arbitral award. Accepting a wider definition of 'public policy', the court considered the arbitral award on the basis of patent illegality. This is likely to lead to inevitable complexities and delays in the process of enforcing a foreign award in India.

Authors: Dhruv Dewan, Mayank Pandey

(Read article <http://www.internationallawoffice.com/?i=55592&l=7G08WSJ>)

United Kingdom

Assigning claims from a bankrupt's estate: costs risks and how to avoid them

A recent Court of Appeal case has highlighted that care must be taken by trustees in bankruptcy when assigning claims in the bankrupt's estate. The case concerned a trustee in bankruptcy who assigned a claim to a third party on terms that the bankrupt's estate would receive a share in any sums recovered. The court held that the trustee could be found liable for the costs of the litigation, notwithstanding the assignment.

Author: Benjamin Roe

(Read article <http://www.internationallawoffice.com/?i=55592&l=7G08WST>)

USA

The email string: considerations on the assertion of attorney-client privilege

In recent years Federal Rule of Civil Procedure 26(b)(5) has proven to be complex, particularly when considering one of the most fundamental privileges in the legal field – attorney-client privilege – and one of the most basic components of the ever-expanding world of technology – the email. The expansion of technology has given rise to the problem of interpreting and implementing old world rules within new boundaries.

Authors: Robert M Flannery, Courtney M Pasquariello

(Read article <http://www.internationallawoffice.com/?i=55592&l=7G08WSZ>)

Australia

ACCC appeals *Metcash Trading* decision, but the deal goes on

The Federal Court of Australia recently delivered a judgment in favour of Franklins, allowing Metcash Trading Limited to acquire all of its shares. The Australian Competition and Consumer Commission sought an interim injunction to restrain the acquisition while it appealed the decision, but the court dismissed the application, thereby allowing the deal to proceed.

Author: **Mitchell Coidan**

(Read article <http://www.internationallawoffice.com/?i=55592&l=7G0YX4F>)

United Kingdom

High Court stresses importance of protection for legal professional privilege

In a recent decision the High Court again emphasised the high level of protection afforded to legal professional privilege in law, and made clear that a party's right to claim legal professional privilege should be overridden by a court order only in exceptional circumstances.

Author: **Laura Martin**

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