

LITIGATION

Brazil

Public contracts cannot be revised based on actual tax costs

Authors: Eduardo Maffia Queiroz Nobre, Silvio de Souza Garrido Junior

The National Department of Transport and Infrastructure, supported by a decision of the Federal Court of Accounts, has been unilaterally amending public contracts in order to apply discounts on previously agreed payments to contracted parties, based on the allegation that they were overpaid. This will directly affect contractors hired by the department for the execution of work or the maintenance of highways.

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

Cyprus

Advance-fee fraud: tracing and recovering assets through the courts

Author: Costas Stamatou

Advance-fee fraud is a classic form of white collar crime, in which the targeted victim is persuaded to advance money to the criminal in the hope of realising a significantly larger gain. The Supreme Court recently confirmed the power of courts to issue provisional measures and asset-freezing orders. The recent *Leon Brener* case is a good illustration of the powers of Cyprus courts in assisting victims of fraud.

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FURTJ3>)

Denmark

Enforcement courts: different rules apply in national and European cases

Author: Peter Schradieck

The Supreme Court recently ruled that when a Danish enforcement court passes a judgment enforcing a foreign judgment, the time limit for appeal of such judgment must be determined in accordance with the Brussels Convention I and not in accordance with the Danish Administration of Justice Act. The court further distinguished between enforcement of Danish and European judgments.

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FURTJ9>)

Hong Kong

Lessons to learn on waiver of legal professional privilege

Author: Kasin Chan

In a recent application to the High Court, a company failed to secure the return of certain privileged documents which had been provided to the Securities and Futures Commission and separately seized by the police. Among other points, the judge questioned whether, as a matter of law, a limited or partial waiver of legal professional privilege is possible.

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

Hungary

Recognition of foreign awards: practical problems, possible solutions

Author: Iván Janitsáry

Award holders that seek to enforce a foreign award in Hungary must be aware of certain procedural pitfalls in the court process. They should also be prepared for some of the surprising effects of a re-awakened piece of legislation that, having lain virtually dormant for 40 years, is causing problems for foreign parties.

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

India

Supreme Court clarifies arbitrator's power to award interest

Authors: Manu Nair, Saanjh Purohit, Tanuj Bhushan

A Supreme Court ruling recently clarified that where a contract specifically prohibits it, arbitrators do not have the power to grant interest. However, the court ruled that where an agreement between the parties does not prohibit the granting of interest, a party claimed interest and such dispute is then referred to the arbitrator, the arbitrator has the power to award interest *pendente lite* (ie, pending litigation).

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

Ireland

Changes to the rules on legal costs in environmental cases

Author: Nicola Dunleavy

The 2010 Planning Act states that for legal proceedings relating to decisions that give effect to the Environmental Impact Assessment Directive, the Strategic Environmental Assessment Directive and the Integrated Pollution Prevention and Control Directive, each party must bear its own costs, subject to certain limited exceptions.

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

Mexico

Class actions: the countdown begins

Authors: Luis Enrique Graham, Salvador Fonseca

Recently enacted legislation that will enable litigants to pursue class actions in federal courts has been published in the *Official Gazette*, starting the countdown for the legislation to take effect. A broad range of class action claims will be possible, including claims for harm to consumers and users of goods and services, damage to the environment and damages resulting from monopolistic practices.

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FURTL1>)

Turkey

Court rules on employers' right to monitor employee computer and email use

Author: Selale Kartal

The Court of Appeals recently ruled that an employer was entitled to monitor its computers and email addresses, as well as the emails sent and received by these email addresses. It further ruled that when an employee uses its employer's computers and email addresses for private purposes and makes libellous remarks about the employer, this constitutes justifiable cause for termination of employment.

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

United Kingdom

Fugitives from justice: the limits of solicitor-client confidentiality

The High Court increasingly has to grapple with complex litigation involving recalcitrant foreign parties, often operating in jurisdictions which are not amenable to enforcing English court orders. Solicitors for such defendants will face a delicate task in explaining how far they can resist disclosing contact information to hostile parties where the courts view disclosure as necessary to give effect to their orders.

Author: Jake Hardy

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

British Virgin Islands

Eastern Caribbean Court of Appeal considers enforcement issues

Authors: Colin Riegels, Louise Graham

The Eastern Caribbean Court of Appeal recently handed down the latest decision in the long-running *Alfa Telecom Turkey Limited v Cukurova Finance International Limited* case. The court held that ultimately, a lender is entitled to act in its own best commercial interests, and doing so does not automatically amount to the lender acting in bad faith.

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FU4U17>)

United Kingdom

Court of Appeal rules on exemplary damages

Author: Abigail Silver

A recent Court of Appeal judgment in a property dispute is a useful reminder of the principle that a claimant cannot recover more than once in respect of the same wrong, and that even the most culpable conduct may be met by only a modest award of exemplary damages.

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FU4U2T>)

Australia

There's no 10 in '11 for Warburton

Author: Tom Griffith

In *Seven Network v Warburton* the New South Wales Supreme Court recently upheld a restraint of trade that had the effect of delaying a leading television executive's plans to move from Channel Seven to competing network Channel Ten. Although he shortened the time period, Justice Pembroke found that the restraint contained in James Warburton's terms of employment was reasonable.

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FT0K7M>)

Finland

Application of *ne bis in idem* principle in Finnish courts

Author: Jussi Ikonen

The Supreme Court and the Supreme Administrative Court have recently considered the implications of the *ne bis in idem* principle and the European Court of Human Rights' position thereon in three judgments regarding tax liability. This update discusses the cases and considers their implications.

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FT0K8B>)

Philippines

Arbitration institution lacks jurisdiction to hear international dispute

Author: Eduardo De los Angeles

A recent case before the Supreme Court demonstrated that an agreement which provides for the settlement of a dispute by an arbitration tribunal operating under international law does not vest authority on a Philippine arbitration institution to hear and resolve the dispute. Any temporary stay issued by a Philippine court in aid of arbitration must be lifted once the parties have agreed on which proper body is to arbitrate.

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FT0K8Y>)

Russia

Welcome clarity for foreign companies on social security and audits

Authors: Andrey Tereschenko, Ivan Zelenin

The Supreme *Arbitrazh* Court has ruled on two issues that are likely to affect companies in

Russia with foreign employees. The court specified whether social security payments should be made in respect of foreign employees who do not plan to reside in Russia permanently. It also ruled on the need for professional translations in dealings between the tax authorities and foreign taxpayers.

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FT0K9U>)

United Arab Emirates

One-year claim limitation commences from completion of delivery

Author: Ali Al Aidarous

The statute of limitations mentioned in Article 287(a) of the Commercial Maritime Law provides that the one-year time limitation for claims arising from a maritime carriage contract should commence from the actual delivery date, or from the date on which the delivery should have taken place. For such cases, the date of the completion of delivery should be used, not the commencement date of the delivery.

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FT0KAQ>)

United Kingdom

Part 36: tips and traps

Author: Daniel Hemming

Part 36 of the Civil Procedure Rules introduced a procedural regime for settlement offers in disputes and prescribed the costs consequences for offers made in accordance with its terms, designed to encourage parties to make and accept reasonable offers. Although the basic formal requirements of a Part 36 offer are straightforward, case law has revealed a number of pitfalls to avoid.

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FT0KBP>)

Isle of Man

New code of conduct for Manx judiciary

Author: John T Aycock

The Isle of Man High Court has published a code of conduct for members of the Isle of Man judiciary in an effort to maintain and enhance judicial standards. The code of conduct is based on the six Bangalore principles of judicial conduct which are well recognised internationally.

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FTK13M>)

Kenya

Court deals blow to women's quest to occupy one-third of public service positions

Author: Grishon Ng'ang'a Thuo

A recent High Court decision has dealt a blow to organisations that have campaigned to ensure that women occupy at least one-third of all elective and appointive public positions in Kenya. As result of the ruling, women will have to wait until the state puts in place the

legislative and policy measures contemplated in Article 27(8) of the Constitution. It will be interesting to see what measures the state will come up with.

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FTK14B>)

United Kingdom

High Court rules on oil derivatives misselling case

Author: Andrew McGregor

In uncertain financial times, with a further wave of litigation likely, financial institutions will take comfort from the fact that the English courts continue to take a robust approach to the distinction between advisory relationships and investment advice that is given as part of the sales process.

(Read article <http://www.internationallawoffice.com/?i=55592&l=7FTK14P>)