

## Pitfalls of International Commercial Arbitration

Christopher R. Seppala<sup>\*</sup>

While international commercial arbitration has certain indisputable advantages over court litigation, it should not be approached uncritically as it also presents, of course, disadvantages. While the disadvantages will, like the advantages, necessarily vary with the facts of each case, the following are certain commonly encountered disadvantages of international commercial arbitration:

1. Jurisdictional disputes tend to be frequent.
2. Expense and delay may be encountered in constituting an arbitral tribunal.
3. Expense and delay may be encountered in organizing the conduct of an arbitration.
4. The outcome of arbitration may be more difficult to predict.
5. While arbitration is vaunted for its neutrality, the objective of neutrality may lead to an arbitral tribunal which is less than the best potentially available and/or to proceedings taking place in a country with whose laws neither party is familiar.

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\* Partner, Law Offices of S.G. Archibald, Paris.

6. Arbitration may take at least as long as a court proceeding of first instance.
7. Arbitration may be at least as costly as a court proceeding of first instance.
8. An arbitral tribunal generally lacks power to enforce its orders and awards.
9. An arbitral award cannot usually be corrected for errors of fact or law.
10. Arbitration tends to be unable to deal effectively with multi-party disputes.

# ARBITRATION: YES, NO OR MAYBE...

## Summaries of the Chamber Seminar

On October 6, the Laws and Publics Affairs Committee sponsored a seminar on the "Pitfalls of International Commercial Arbitration". The following are summaries of the presentations by Christopher R. Seppala, Partner, Law Offices of S.G. Archibald, Paris, and Pierre-Yves Tschanz, of White and Case, Paris.

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## Chamber calendar

**Thursday, December 4** Banquet luncheon - Guest speaker: Mr. Michel Noir, Ministre délégué auprès du Ministre de l'Économie, des Finances et de la Privatisation, chargé du Commerce extérieur.

**Monday, December 15** Christmas Cocktail Party.

It is generally easy to obtain enforcement of awards made by arbitrators around the world, especially in the 68 countries — including the United States of America and France — which are parties to the "New York Convention" of 1958. Only a few serious defectors listed in Article 5 of the Convention may justify a denial of enforcement. For example, the losing party proves that there is no valid arbitration agreement or clause, or the arbitrators did not comply with due process or decided a question not referred to them.

In order to enforce an award

against a state or a state-controlled entity, its assets may be attached, provided they are not protected by sovereign immunity from execution. Generally, immunity does not apply if the assets are used for commercial purposes or if the state has waived its immunity. Most of the time, however, arbitral awards are complied with voluntarily by the losing party. This can be explained both by the good enforcement prospects and by the fact that voluntary compliance might salvage the business relationship between the parties.

— Pierre-Yves Tschanz



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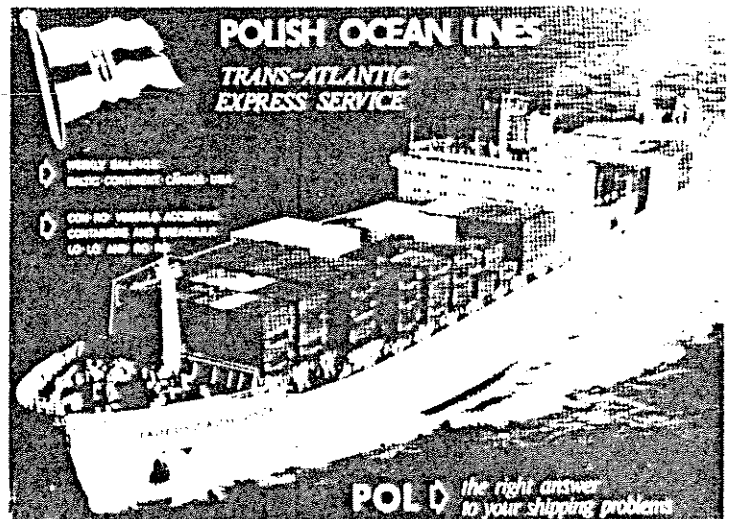
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