

# International Dispute Resolution

February 2006 - Issue 13

Welcome to the February 2006 edition of the Bird & Bird Dispute Resolution Newsletter.

This edition of our international newsletter features some interesting judicial decisions across Europe. In particular, we report on the new procedural legislation in The Netherlands and examine the liability for interference with contractual relations in Sweden. This edition also explores issues in international arbitration, focusing on the cost of arbitration in the UK and the Arbitral Tribunal in Asia, and features two notable articles covering key developments in the German courts.

Jane Player  
International Dispute Resolution Group

## Articles

### New procedural legislation in The Netherlands

The codification of two landmark decisions of the Dutch Supreme Court and the implementation of European Regulations have resulted in important amendments to the Dutch Code on Civil Procedural law (the 'Code'). The Code has recently been amended by the Amending Act on Civil Procedural law (the 'Act') which came into force in The Netherlands on 15 October 2005. The Act addresses various

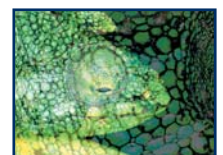
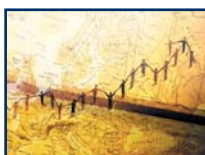
inconsistencies in the Code and also provides a broad range of new provisions.

#### Amendments

Firstly, amendments were made to two articles in the Code which address how jurisdiction is to be determined in a contractual dispute when the contract contains a jurisdiction clause and when it does not. A new article was also introduced to define the circumstances in which the place of execution of contracts for the sale of moveable properties and the supply of services is to be The Netherlands. These amendments originate from Council

Regulation no. 44/2001, which concerns the jurisdiction, recognition and enforcement of judgments in civil and commercial matters.

The Act has codified how to deal with the service of summons for appeals in cases subject to Council Regulation no. 1348/2000; when a claimant chooses to serve the writ at the last known domicile of the defendant in The Netherlands (on the basis of section 63 of the Code). In most cases this is the address of the defendant's solicitor. On 17 January 2003, the Dutch Supreme Court ruled that the served summons should be sent to the



authority of the defendant's (EU) residence within 14 days after the service. The date of the served summons will only be regarded as the date of the lodging of the appeal (and thus determine whether the appeal was lodged in time) if this requirement is met. The provision is designed to protect the defendant by ensuring that he receives notice of the case against him and is not sentenced by default.

The Act has also codified the ruling of the Dutch Supreme Court in the case of *Zoontjes vs. Kijlstra* which was handed on 18 February 1994. The Court found that the withdrawal of an appeal (to the Supreme Court) after the expiration of the term but before the announced court date, should not interfere with the admissibility of a, not yet lodged, cross appeal. The court decided that a cross appeal is a self-reliant statutory remedy and should not therefore be affected by the appeal decision on the main issue.


Of particular interest is the inclusion of an article requiring a summons to be served on financial and public institutions before an interim attachment order can be granted. This gives institutions a valuable opportunity to argue their case before

bank accounts or assets are made the subject of any freezing order.

Finally, the Act defines how the jurisdiction of certain cases brought before Subdistrict Courts can be ascertained. In cases with a value of less than 5,000 euros, cases involving individual employment contracts and cases involving consumers and immovable goods, the courts can now rule on their own jurisdiction without a request from one of the parties. This is in line with another provision which restricts the use of jurisdiction clauses and requires the Judge to test his jurisdiction *ex officio*. The Dutch legislator argues that this provision is not as draconian as it appears since the parties can always circumvent a Judge's apparent lack of jurisdiction by agreement between themselves.

### Conclusion

The amendments made to the Code demonstrate the requirement for Dutch legislation to concord with Dutch legal precedents and European Regulations. Overall, the Act has provided a clearer view of the Dutch civil procedural law and called for an end to long-standing uncertainties.

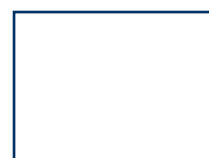
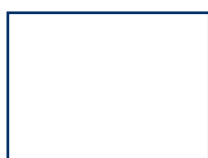
 Eggo Jan Rietema & Laura Grijpma, The Netherlands

## Liability for interference with contractual relations in Sweden

Although most European legal systems recognise that inducement to breach a contract by a third party constitutes a tort, the position in Sweden has historically been unclear. This ambiguity is attributable to a large degree to the traditional approach adopted by Swedish courts and scholars, of applying a narrow and literal interpretation of law rather than a purposive one.

The main Swedish rules on liability in tort are found in the Tort Liability Act ("the Act"). The Act deals primarily with liability for negligence; extended liability such as strict liability is dealt with in special legislation.

The Act states that liability for pure economic loss arises in the event of criminal acts. For many years, the approach of Swedish courts and most scholars was to construe this as if damages for pure economic loss outside of the contractual sphere



could be awarded only when caused by a criminal act. However, in 1987, the Supreme Court took a more purposive approach and established the rule of justifiable reliance: where a person suffering a loss had a justifiable reason to rely on the act of another person who knew he was being relied on then he should be compensated for pure economic loss even if the loss was not caused by a criminal act.

In September 2005, the Supreme Court yet again had to consider whether to extend the boundaries of tortious liability for pure economic loss. The Supreme Court had cause to determine whether interference with contractual relations could result in an award of damages.

### The Frasses case

A hamburger restaurant operating under the name "Max" assigned its lease for the premises from which it had previously been trading ("the Old Premises") to Company A. The assignment was made on the basis that the Old Premises would be used for an art gallery and not for a competing business. However, a couple of months later, a company

known as "Fresses" opened a competing hamburger restaurant at the Old Premises. Max, who at the time was operating a hamburger restaurant at nearby premises, lost a number of customers to Frasses. It later emerged that prior to the transfer of the Old Premises to Company A, Frasses had acquired a controlling majority shareholding in Company A. Company A's (and Frasses's) intent had, from the start, been to acquire the Old Premises to enable Frasses to open a competing restaurant and not an art gallery.

In an initial trial between Max and Company A, the lease was declared void on account of fraudulent misrepresentation and Max was awarded damages. Company A, however, filed for bankruptcy before Max received any compensation from it. Max then brought a claim against Frasses on the grounds of interference with contractual relations.

The Supreme Court noted initially that, under Swedish law, there ought to be a liability in tort for a third party who, in a qualified undue way, induces a party to a contract to breach that contract to the detriment of the other

contracting party. The court asserted that Frasses had acted in collusion with Company A to deceitfully induce Max to enter into a contract which it would not have entered into if it had known the intentions of Company A and Frasses. The deceit had enabled Frasses to run a hamburger restaurant at Max's Old Premises and therefore causing damage to Max.

The court concluded that nothing had been brought to its attention which could justify Frasses's behaviour from a competition law aspect; on the contrary, it was in conflict with what could reasonably be required of a professional businessman. The court described Frasses's behaviour as "undue in a qualified manner" and held that Frasses should be liable in tort for the losses suffered by Max.

### Conclusions

Through the Frasses case it has finally been acknowledged that interference with contractual relations may lead to damages in tort in Sweden. However, the more precise scope of the rule is still uncertain as the court did not clarify what behaviour would be regarded as being "qualified undue". Will it require collusion between the



tortfeasor and the party breaching the contract or is it sufficient that the tortfeasor in some other way induces a contractual breach? Is deceit required? Could liability be imposed even if the tortfeasor is merely negligent or does the loss have to be caused intentionally? Does the tortfeasor have to be enriched or is it sufficient that the contractual party suffers a loss due to the tortfeasor's behaviour?

Another important issue still to be resolved is whether the rule will only apply in a commercial context between competing companies (as in the Frasses case) or if it is also applicable in other situations where inducement occurs. It is clear that many questions still remain to be answered but Swedish tort law has, in the Frasses case, taken a further step away from its historical heritage of a strict narrow interpretation of law.

 **Michael Frie & Peter Eriksson,**  
Sweden

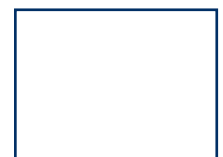
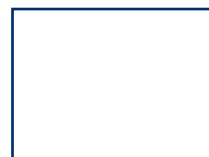
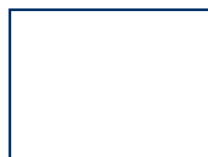
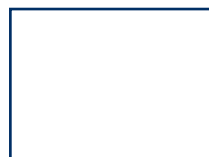
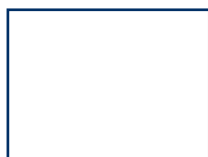
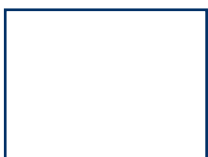
### Copyright Levies on PCs under German Law (Munich Court of Appeal dated 15 December 2005)

On 15 December 2005, the Higher Regional Court of Munich upheld a decision of the first instance by the District Court of Munich (the "Lower Court") which was handed down on 23 December 2004.

The Lower Court held that copyright levies should be charged at a rate of 12 euros for each PC sold in the German market. The German Collecting Society "VG Wort" (the "Collecting Society") (the Claimant in the action) and various industry representatives, including Fujitsu-Siemens (the Defendant in the action) had previously been unable to agree on an equitable copyright levy for PCs. The arbitral body of the German Patent and Trademark Office were asked to settle the dispute between the parties. In February, the arbitral body decided on a levy of 12 euros per PC. The Collecting Society disagreed and argued that the higher rate of 30

euros should apply. The Lower Court ruled that Fujitsu-Siemens was to provide information on how many PCs it had sold in Germany since 1 January 2001 and to pay EUR 12 per each such PC.

The Lower Court explained that one purpose of a PC is effectively to copy copyright protected works (for example, when a user saves a copyright protected work to the hard drive of a PC and prints it to a printer). The Lower Court found that copying does not need to be the exclusive purpose of a particular device to trigger copyright levies. The Lower Court relied on the so-called "fax decision" of the Federal Court of Justice, which concluded that copying need not be the sole purpose of a device for it to trigger copyright levies. The Lower Court also argued that the applicability of copyright levies did not depend on the extent of usage for copying purposes. Finally, it rejected Fujitsu-Siemens's argument of an inadmissible "multiple levy". Fujitsu-Siemens had argued that a PC was only part in a chain of other (copyright levied) devices such as printers or scanners and should therefore not be subject to a separate copyright levy.



During the oral hearing, the Higher Regional Court of Munich hinted at some matters of constitutional law and other issues of "fundamental legal importance", for which reason it has admitted the case to be carried to the Federal Court of Justice (Bundesgerichtshof).

### Discussion

According to European Law (in particular the European Directive 2001/29/EG), the national legislations of the European Union may allow systems for raising copyright levies. The copyright levies on copying devices are imposed independently and vary greatly from country to country. For example, the copyright levy for a recordable DVD player is 1.59 euros in France but 0.17 euros in Germany. The economic consequences for the distribution of electronic copying devices throughout the European markets are therefore dramatically different depending on the country in question and this is being exacerbated by the current trend of converging technology (mobile phones/ Personal Digital Assistants with PC functions etc). A uniform European copyright fee structure would clearly be desirable but is unlikely to be achieved in the

short term given the current variety of fee structures. Furthermore, the UK, Ireland and Luxembourg do not currently recognise the concept of copyright levies at all. Reform is being discussed in Germany. One idea is to limit copyright levies to devices which can be used for copying to a "noteworthy degree".



**Alexander Duisberg & Swantje Richters ,Germany**

## Counting the cost of Arbitration

If the first question a lawyer is asked is "are we going to win?", it is generally closely followed by "how much will it cost?".

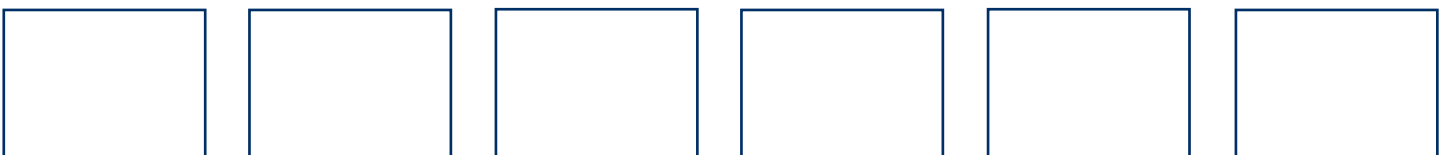
Arbitration in England is much praised for its various virtues of confidentiality, limited right of appeal, providing a means whereby parties may avoid unfriendly courts and the portability of any awards given. As much as it is praised, however, it receives criticism in equal measure for what parties see as its inherent cost over and above litigation in the national courts. Although cost is not

the sole determining factor in deciding the most appropriate means of arbitrating a dispute, it is certainly one of them.

In arbitration, unlike court litigation, the parties pay for their "judges" and their "court". These can be termed the costs of the proceedings and include all the fees and expenses of the Arbitral Tribunal, as well as venue costs.

In addition, the parties may choose to pay fees for an arbitral institution, varying between such institutions as the International Court of Arbitration ("ICC"), the London Court of International Arbitration ("LCIA") and the American Arbitration Association ("AAA").

When selecting arbitration provisions at the time of contract the parties may, of course, chose not to proceed under the auspices of any arbitral institution, opting instead for "ad hoc" arbitration. Whilst there is an obvious immediate saving of administrative fees, parties do not always enjoy the considerable benefit of tried and tested institutional rules (save in the case of ad hoc arbitrations conducted under UNCITRAL rules) nor (for ICC



arbitrations) the comfort of its claim to quality control over the awards of its Tribunals.

As in court litigation (pending any orders by the Tribunal in favour of a successful party), parties bear the costs of their respective legal teams, experts and lost management time.

### Counting the cost of your "Judges"

In ad hoc arbitrations, there are no prescribed rules for calculating fees (save that, under UNCITRAL Rules, there is a provision that fees should be reasonable in the circumstances of the case). Generally, parties agree a prescribed hourly or daily rate with the Tribunal which, in the London arbitration market, can range anywhere between £200 and £600 per hour per arbitrator. For a dispute which turns out to be lengthy, Tribunals can prove costly.

The LCIA charges between £150 and £350 per hour for its Tribunal members. AAA works on the basis of individual rates. By contrast, the ICC fixes Arbitrators' fees according to a sliding scale determined by the sum in dispute. Whilst an ICC Tribunal rate may initially appear costly, ICC arbitrators often complain that a lengthy dispute is uneconomic, when

compared to remuneration for conducting an ad hoc or AAA arbitration.

A party using the ICC benefits from certainty of cost. As is the nature of such things, however, the purchase of such certainty may ultimately prove more expensive than paying an hourly rate.

### Counting the cost of your administrative support

Administrative fees in institutional arbitration are levied in accordance with the rules of each particular institution. These can be divided, generally speaking, into institutions that base administrative fees on the value of the dispute and those that base them on time spent.

The ICC largely determines administration fees according to a sliding scale based on the sum in dispute (with nominal provision made for the speed a dispute is dealt with, time spent and complexity). AAA also calculates its fees on a value basis, adding in an initial registration fee and an administration fee.

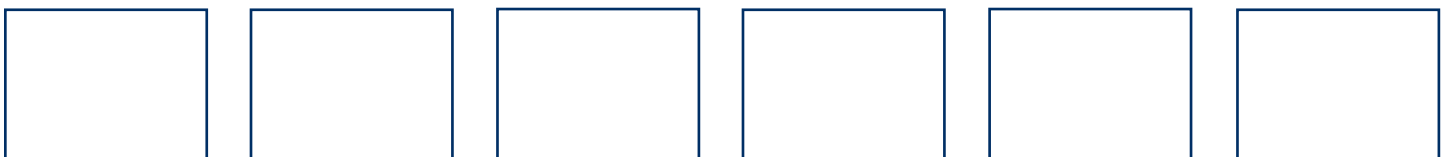
In contrast, the LCIA calculates its administrative fees largely on the basis of time spent by its administrative

staff (again with an initial registration fee). On the face of it, the LCIA may appear the better value option. Users should be aware, however, that studies seem to show that ICC arbitrations are significantly shorter than cases where Tribunal fees are calculated on a time basis. Whilst there is a significant upfront cost associated with the ICC, it is not necessarily more expensive in the long run.

### Counting the real cost of arbitration

To determine the least costly arbitration route for a given dispute, it is necessary to undertake an analysis of the various possibilities discussed above. For present purposes, we concentrate on the costs of the Tribunal and the institution (if any) and leave aside the costs of legal and expert representation (which are not particular to arbitration and, in many cases, can be much the same as those of litigation).

We must make a few key assumptions: (1) a dispute in the sum of US\$ 1 million which (2) will take a total of two weeks of Tribunal time (one for procedural matters and one for the substantive hearing) and (3) the arbitral institution will need 20 hours of administrative time .



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The comparison makes interesting reading:

Ad hoc/ Institution	Tribunal Fee (US\$)	Registration Fee (US\$)	Administrative Fee (US\$)	Total (US\$)
Ad Hoc	19,000 per day	None	None	190,000
ICC	105,000	2,500	14,000	121,500
LCIA	12,000 per day	2,650	7,000	129,650
AAA	19,000 per day	6,000	2,500	198,500

For this particular dispute, it appears the ICC or the LCIA may be the least costly choices. Of course it must be recognised that, as the value of any dispute increases, so do the fees for institutional arbitration conducted on an ad valorem basis. For example, in a US\$30 million dispute which takes the same amount of time as a US\$1 million dispute, the costs of the proceedings increase for an ICC arbitration but not for ad hoc. It is easy, once a dispute has arisen, to make the above comparison. Given that the parties may make their choice as to arbitral forum at the time of contract however, they are generally not able to anticipate accurately the value of any dispute which may arise.

Opting for ad hoc arbitration over institutional arbitration (and avoiding administration fees) does not always produce an ultimate cost benefit to the parties. Neither should parties underestimate the benefit that the weight of institutional administration can bring; an ad hoc arbitration may

well take significantly longer without the administrative support of the ICC or LCIA. Furthermore, what the parties save in administration fees, they may well lose in commitment or cancellation fees. (It is often surprising to arbitration practitioners from continental Europe that in English arbitrations provision is often made for commitment or cancellation fees in the event parties cancel hearings.)

Whether parties opt for ad hoc or institutional arbitration, consensus is that arbitration as a means of resolving disputes entails an additional cost over and above that of national court proceedings. In the grand scheme of things however, and given the well publicised benefits of arbitration, users often see this as a small price to pay.



**Sarah Walker, UK**

## Challenge of an arbitral award on the basis of the Arbitral Tribunal's interpretation of the parties choice of law

The China International Economic and Trade Arbitration Commission (CIETAC) is the main international arbitration body in the People's Republic of China (PRC). Its physical secretariats are located in Beijing, Shanghai and Shenzhen. CIETAC amended its rules in May 2005.

### Seat of arbitration

One of the most significant changes is that parties are now free to select the seat of CIETAC arbitrations. This is a significant development as it permits for the first time the conduct of CIETAC arbitration outside of the PRC. A parallel development is that parties may for the first time adopt arbitration rules other than the CIETAC



rules, provided these rules do not conflict with the CIETAC arbitration rules or the law of the seat of arbitration.

### **Arbitral award**

Under the new rules, a CIETAC arbitral award will be deemed to have been made at the seat (or place) of arbitration chosen by the parties. As this provision has yet to be tested, it is unclear whether, for enforceability purposes, a CIETAC arbitral award handed down in, for example, in Hong Kong will be considered a 'domestic' or 'foreign' award by the PRC courts.

### **Enforceability of awards**

Under the CIETAC arbitration rules parties must comply with an award within the time limit specified in the award. If one party fails to comply and the residence or any property of the losing party is located in the PRC, the other party may make an application to the Intermediate People's Court (IPC) for enforcement of the award pursuant to the PRC's Civil Procedural Law (CPL).

The PRC is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) providing for the mutual recognition and enforcement of arbitral awards.

The New York Convention no longer applies as between Hong Kong and the PRC. However, awards obtained in Hong Kong and the PRC are mutually enforceable under the Convention or Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region which closely follows the New York Convention.

The grounds for opposing enforcement of 'domestic' and 'foreign' awards are different. These are contained in Article 217 and 260 respectively of the CPL.

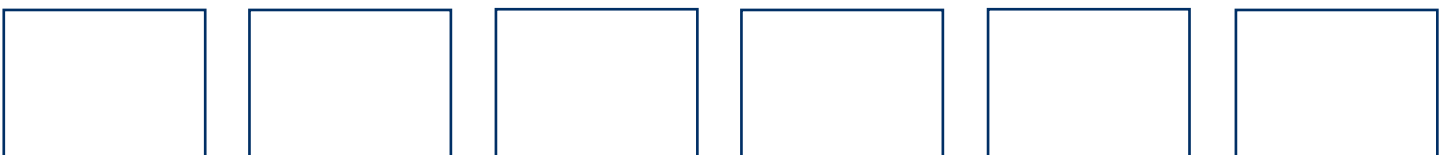
The grounds contained in Article 217 examine action of both the arbitration procedure and to an extent the substantive issues. For example, in relation to a domestic award, the court may refuse an application to enforce if the main evidence for ascertaining the facts was insufficient or the law was applied incorrectly. A court may also refuse an application on more familiar bases such as if the composition of the arbitral tribunal or the arbitration procedure was not in conformity with the statutory procedure.

In contrast, the grounds set out in Article 260 in relation to foreign awards focus solely on procedural

issues. For example, if the matters decided in the award exceed the scope of the arbitration agreement or are beyond the authority of the arbitration organ.

In relation to a foreign award, if the IPC refuses the application, the applicant has no right of appeal but may utilise a review procedure under the Notice Concerning the Handling of Foreign-related Arbitration and Foreign Arbitration 1995.

In reality, it is difficult, if not impossible, to enforce foreign awards in the PRC. Reliable information is hard to come by, and there has only ever been information in the public domain about a handful of foreign awards being successfully enforced in the PRC to the point of the IPC actually returning money obtained from the losing party to the applicant for enforcement. There are plenty of anecdotes of foreign awards simply getting 'lost' in the courts due to local protectionism. Further, there is a residual power in the courts to decline enforcement for 'public policy' reasons. 'Contrary to public policy' can be given a much wider meaning in the PRC than it is normally understood to have in private international law and socialist considerations may be taken into account.



CIETAC awards have to date been readily enforceable in the PRC as domestic awards. However, the new possibility of CIETAC arbitrations taking place outside the PRC raises the prospect of a CIETAC award being treated as a foreign or Hong Kong award for enforcement purposes.

There remains, of course, the possibility that larger Chinese companies may honour a "foreign" CIETAC award without the need for enforcement. Even if they do not do so immediately, it is possible to use a CIETAC award in one's favour to bring pressure on the debtor, for example, via the administrative organisation of the PRC Government.

While a foreign or Hong Kong CIETAC award may not have all the certainty of a domestic CIETAC award, it may have better prospects of enforcement than foreign or Hong Kong awards resulting from ad hoc arbitrations on those conducted by other commissions.



**Rosamund Cresswell & Edward Alder, Hong Kong**

## False assertions of property ownership and international competence of German courts

In a recent decision, the German Federal Supreme Court (the "Court") has strengthened the position for proprietors of artworks. The Court held that the lawful proprietor of a painting can obtain a cease and desist order against a person who falsely claims, in front of others, to be the owner of a painting. Further, the Court confirmed that German courts are internationally competent in these matters if the incorrect assertions were made in Germany, even if the defendant resides outside of Germany.

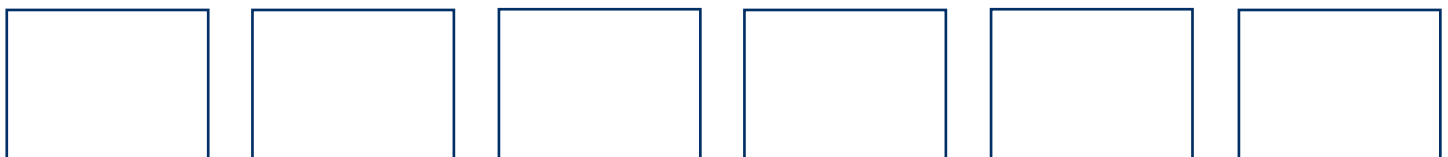
In this case, the plaintiff, an art collector, acquired a painting more than 20 years earlier from a German art gallery, which, in turn, bought it at an auction in the USA a further 25 years previously. The painting had originally been stolen from the defendant's grandfather, the artist. The defendant, an Italian resident, wrote a letter to a fine art publishing company claiming to be the proprietor of the painting. The plaintiff requested

the defendant to cease and desist making these allegations, which the defendant refused. The plaintiff then commenced legal proceedings.

During the proceedings, both parties understood that the plaintiff was the legal proprietor of the painting; the time requirements for acquisitive prescription had been fulfilled as the painting had been in the plaintiff's possession in good faith for over 10 years.

In first instance, the claim for cease and desist was dismissed. The plaintiff then successfully appealed the decision. Upon the defendant's further appeal, the Court held that the defendant had indeed committed a tort. The decisive argument for the Court was that the defendant had raised the incorrect assertions of ownership, not only in front of the plaintiff, but also in front of third parties, i.e., the publishing house. According to the Court, such allegations are particularly disadvantageous for the proprietor of an artwork, because they have potential to render an artwork virtually unsaleable.

Furthermore, the Court held that the German courts were internationally competent for the action, even though the defendant was domiciled in Italy. According to the European Regulation on jurisdiction, the courts of the state



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where the defendant is domiciled are competent to hear all actions. In addition, the courts of the state in which the harmful event occurred, or may occur, will have jurisdiction to hear cases regarding tortious activities. The Court confirmed that such a harmful event did not require the plaintiff to suffer actual financial damage but that it was sufficient that financial damage may occur.

As the Court confirmed an earlier judgment of the European Court of Justice, it was not obliged to submit the case to the European Court of Justice which has the "last word" in the interpretation of European regulations.

 **Dr. Matthias F. Meyer, Germany**

## International arbitration news

As well as appreciating the special international nature of arbitration, our Arbitration Team provides clients with an in depth understanding of arbitration laws and procedures in jurisdictions local to the dispute. Such knowledge is key to ensuring access to local procedural and substantive legal advice, as well as to achieving successful enforcement of arbitral awards in domestic courts.

### International Arbitration Team

Sarah Walker has recently joined the Dispute Resolution Group of Bird & Bird in London as a partner. She brings to the International Arbitration Team her considerable experience of institutional and ad hoc international arbitration. Her skills complement the wealth of experience in both international and domestic arbitration, which Bird & Bird has across its various sectors and jurisdictions.

### Future Seminars

Following on from the success of the arbitration seminar in Paris in March 2005, and in response to popular demand, Bird & Bird will be holding an additional seminar in Paris in the spring of 2006. Further details will be available shortly.

There will be an arbitration seminar in Milan in May 2006, with guest speakers including representatives of the Milan Chamber of Commerce.

There are further seminars planned in other jurisdictions for autumn 2006.

For more information in relation to these seminars or other international arbitration matters, please contact Duncan Quinan on: +44 (0) 207 415 6037 or

Sarah Walker on: +44 (0) 207 415 6062.

## Reform of Italian civil proceedings

This article examines the new legislation that will come into force next March (2006) (subject to further postponements), significantly changing Italian civil procedure. The goal of the reform is to increase the efficiency and speed of civil proceedings by strengthening the power of the parties.

The modifications and amendments to the old legislation are contained in the Legislative Decree 35/2005 (now converted to law by Law 80/2005).

### Amendments to the Italian Civil Procedure legislation

Prior to the reform, proceedings were divided into several autonomous hearings. The reform seeks to concentrate these hearings by reducing their number. However, the judge will still be able to exercise his discretion and fix further hearings if, for example, there are any irregularities in relation to the constitution of the parties. The reform also means that examination of the parties by the judge will now be optional rather than compulsory.



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The judge need only arrange for the parties personally to appear at the hearing if it is jointly requested by the parties.

Furthermore, the reform aims to accelerate the evidential phase of civil proceedings. If requested by a party in the first hearing, the judge will grant a term of up to 30 days to file a single brief containing amendments to claims and any new evidence. Prior to the reform, these could be filed in separate briefs. The other party will be allowed up to 30 days to file its response. The judge must then fix the hearing for the analysis of the admitted evidence within 30 days from the expiry of this second term. If neither party makes this request, the judge may opt to decide the case, if he considers sufficient evidence has been filed. Alternatively, the judge may evaluate the admissibility of the evidence filed by the parties.

It should also be highlighted that in future proceedings a party will be able to directly call the witness to testify by serving him the relevant summons. This amendment should prevent the deadlock and inconveniences that were previously common when a party attempted to summon a witness through the notification office. The primary intention of the legislation is to reduce the quantity of written briefs and to attach more

importance to the oral phase of proceedings. This will be brought about by:

- limiting the stages during which amendments to the Statement of Case may be made;
- reducing the number of hearings which, in turn, will result in fewer briefs being exchanged; and
- each party filing a single brief containing amendments to claims and any new evidence, rather than separate briefs.

### Conclusion

Although the goals of the new rules are generally considered a vast improvement on the previous legislation, only concrete application of the new legislation will allow us to evaluate the actual extent of these expected benefits.



**Rahul Kakkar & Evelina Marchesoni, Italy**

## Events

Bird & Bird regularly hosts seminars for its clients and contacts. Please refer to the list below for details of these events.

### Employment

22 March  
Bird & Bird, London

### Corporate Governance and Electronic Data Management (Symantec)

22 March  
Bird & Bird, London

### Outsourcing best practice: ensuring data protection compliance

23 March  
Bird & Bird, London

### What is WiMAX?

30 March  
Bird & Bird, The Hague

### Employment

26 April  
Bird & Bird, London

### Long term developments in the Italian and UK financial industry

5 April  
Bird & Bird, London

### New procurement directives and regulations

27 April  
Bird & Bird, London

If you would like further information regarding any of these events, please contact Deirdre Mahon by email at [deirdre.mahon@twobirds.com](mailto:deirdre.mahon@twobirds.com) or phone on +44 (0)20 7415 6082.



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Paul Hermant (Belgium)  
Edward Alder (China and Hong Kong)  
Marion Barbier (France)  
Klaus-Jürgen Michaeli (Germany)  
Massimiliano Mostardini (Italy)  
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We appreciate your views and feedback, so please do let us know if there is something that you would like to see in the next edition of the newsletter. You can email our editor at [dispute.resolution@twobirds.com](mailto:dispute.resolution@twobirds.com).

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