



Paris | 23 May 2014

# JURISDICTIONAL CHOICES IN TIMES OF TROUBLE

Under the auspices of the ICC Institute of World Business Law

## PROGRAMME

### **Chairman of the ICC Institute of World Business Law:**

- **Yves Derains**  
Founding Partner, Derains & Gharavi, France; Former Secretary General, ICC International Court of Arbitration

### **Co-Chairmen of the 2014 ICC Institute Spring Conference:**

- **Georges Affaki**  
Chairman of the Legal Committee of the ICC Banking Commission; Associate Professor, University Paris II, France; Council Member, ICC Institute of World Business Law
- **Horacio Grigera Naón**, Independent Arbitrator, United States; Former Secretary General, ICC International Court of Arbitration; Council Member, ICC Institute of World Business Law

09.30-09.35 Welcoming remarks  
• **Yves Derains**

09.35-09.45 Introduction  
• **Georges Affaki** and **Horacio Grigera Naón**

### Session I – Asymmetrical choices

09.45-10.30 The validity of unilateral optional clauses  
- Overview of the jurisdictions which uphold unilateral option clauses and those that consider them void  
- The resulting legal uncertainty  
- Study of the causes, implications and solutions  
- Is the situation the same if the option reserves the right to resolve disputes via recourse to an arbitral tribunal rather than courts?

#### *Speakers:*

- **Maxi Scherer**, Special Counsel, Wilmer Cutler Pickering Hale & Dorr LLP, United Kingdom; Senior Lecturer, School of International Arbitration, Queen Mary, University of London
- **Alain Rau**, Mark G. & Judy G. Yudof Chair in Law, University of Texas at Austin School of Law, United States
- **Anton Asoskov**, Lecturer, Lomonosov Moscow State University, Russian Federation
- **Marie-Elodie Ancel**, Professor of Law, University Paris-Est Créteil Val de Marne (UPEC), France

#### *Moderator:*

**Georges Affaki**

10.30-10.45 Questions – Discussion

10.45-11.05 *Coffee break*

11.05-11.50 The limits to the parties' free choice of jurisdiction  
- The requirement of an objective link between the choice of jurisdiction and the connection of the contract to a specific country  
- Other formal requirements for the validity of jurisdictional choices (incorporation by reference, etc)  
- News on the doctrine of forum non conveniens  
- Debate on The Hague Convention on exclusive choice of court agreements

#### *Speakers:*

- **Diego Fernández Arroyo**, Professor, Sciences Po Law School, France
- **Marie Berard**, Partner, Clifford Chance LLP, United Kingdom
- **Khawar Qureshi QC**, Head of Chambers, McNair Chambers, United Kingdom and Qatar

#### *Moderator:*

**Horacio Grigera Naón**

11.50-12.05 Questions – Discussion

- 12.05-12.35 Disparities in the choice of arbitrators
- Speakers:*
- **Eric Loquin**, Professor, University of Burgundy, France; Honorary Dean, Law Faculty of Dijon
  - **Paolo Michele Patocchi**, Partner, Patocchi & Marzolini, Switzerland
- Moderator:*  
**Pierre Mayer**, Partner, Dechert LLP, France; Professor Emeritus, University Paris I; Council Member, ICC Institute of World Business Law
- 12.35-12.45 Questions – Discussion
- 12.45-13.00 Presentation on the current status and future prospects of the Choice of Court Convention
- **Marta Pertegás**, First Secretary, Hague Conference on Private International Law, The Hague
- 13.00-14.30 *Lunch (Restaurant Jamin, 32 rue de Longchamp, 75016 Paris)*

**Afternoon**

**14.30-18.00**

**Session II - The influence of national laws on jurisdictional choices**

- 14.30-15.10 Applicable law: Sulamerica and Arsanovia—is there a contrast between these two English cases and national laws opting for a substantive approach (rather than a conflict of law approach) to determine the validity of the arbitration clause?
- Speakers:*
- **Georges Affaki**
  - **Julian D.M. Lew QC**, Professor and Head, School of International Arbitration, Queen Mary, University of London; Barrister, 20 Essex Street Chambers, United Kingdom; Council Member, ICC Institute of World Business Law
  - **François-Xavier Train**, Professor of Law, University Paris 10, France
  - **Laurence Usunier**, Professor, University Paris 13, France
- Moderator:*  
**Horacio Grigera Naón**
- 15.10-15.30 Questions – Discussion
- 15.30-15.55 The law applicable to the arbitrability of the dispute
- Speakers:*
- **Carlos Alberto Carmona**, Partner, Marques Rosado Toledo Cesar & Carmona Advogados, Brazil; Professor of Civil Procedure Law, São Paulo University
  - **Hans van Houtte**, President, Iran-United States Claims Tribunal, The Hague; Professor, University of Louvain (KULeuven), Belgium
- Moderator:*  
**Yves Derains**
- 15.55-16.15 Questions – Discussion
- 16.15-16.35 *Coffee break*

16.35-17.00 Choice of a tribunal and lis pendens: the conflict between the EU Brussels Regulation 1 bis and other legislations – which solutions? What are the consequences of the ratification of The Hague Convention on the choice of court?

*Speakers:*

- **Arnaud Nuyts**, Partner, Liedekerke, Belgium; Professor, University of Brussels (ULB)
- **Gilles Cuniberti**, Professor of Private International Law and Comparative Law, University of Luxembourg
- **Horatia Muir Watt**, Professor of Law, Law School, Sciences Po Paris, France

*Moderator:*

**Horacio Grigera Naón**

17.00-17.25 Questions – Discussion

17.25-17.40 Conclusions

- **Georges Affaki** and **Horacio Grigera Naón**

17.40-17.45 Closing remarks

- **Yves Derains**

17.45 *Cocktail reception*