New Article on International Commercial Courts in the Litigation Market

Prof. Dr. Marta Requejo Isidro (Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law) recently posted a new paper in the MPI*Lux* Research Paper Series, titled International Commercial Courts in the Litigation Market.

Here is an overview provided by the author.

The expression "international commercial courts" refers to national judicial bodies set up in the last fifteen years in several jurisdictions throughout the world -Asia, Middle East, Europe- to suit the specific demands of international commercial litigation. The courts and the proceedings before them share unique features often imported from the common law tradition and the arbitration world, with a view to providing a dispute resolution mechanism tailored to the subject-matter. This notwithstanding there is no single model of international commercial court: on the contrary, each of them presents distinctive characteristics, which determine their greater or lesser capacity to fulfil the objective of serving international commercial litigation. By way of example: in their origin the courts of Dubai and Abu Dhabi were created not so much to reproduce a successful model of international commercial litigation, as to separate – and complement at the same time – the local legal system of the Emirates, based on Sharia and the tradition of civil law and with Arabic as the official language. In the wish to capture in as much as possible the advantages of international arbitration, parties before the Dubai International Financial Centre Courts are given the possibility of "converting" a DIFC Court's decision into an arbitral award; no other court offers this chance. The authorization to use English as the language of the process varies from court to court in Continental Europe. In the Old Continent only the (still pending) Brussels International Business Court would be staffed with foreign judges.

This paper summarizes the main traits of several international commercial courts prior to exploring their relationship with international arbitration, on the one

hand, and among them, on the other, at a time when the term “litigation market” is used matter-of-factly, and the “competition” among dispute resolution mechanisms is regarded as an incentive for the improvement within justice systems at a global level. In this context, elements such as the language of the process, the possibility of being represented by a foreign lawyer, the facilities to apply English law to the merits of the case, or the existence of a network of instruments for the enforcement of decisions abroad, may prove decisive in the choice of the users to file a claim with an international commercial court (and which one among them), or going to arbitration.