Írta: Info
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Via the International Arbitration Amendment Act (2010) enforcement of the foreign arbitral awards in Australia has been strengthen. If debtor has assets in more states or territories of Australian Commonwealth, request for enforcement is to be submitted to Federal Court instead of more state´s courts. Moreover Court Leave for enforcement was absorbed in one stage with request for enforcement, which strengthen arbitration as competitive to adjudication based on state´s statutory laws (e.g. Construction Acts).

Arbitration in common law countries has been seen as relatively burdensome proceeding, and adjudication in construction contracts
was intended as cheaper way to proceed with claims from contracts. In fact , for company expanding from CEE costs of adjudication in Australia would be even higher than costs of arbitration via proposed JSM Permanent Court of Arbitration with venue in Switzerland.

For example Royal Institute of Chartered Surveyors Dispute Resolution Service *(RICS DRS Oceania was launched in Queensland in March 2005 in response to becoming registered as an Authorised Nominating Authority (ANA) under the Building and Construction Industry Payments Act, which came into effect on 1st October 2004. RICS DRS now operates as a nominating authority in Queensland, New South Wales, Victoria, Tasmania, Australian Capital Territory, South Australia, Northern Territory and Western Australia, and thus it is only nationally acting ANA.)* offer
cheapest adjudication of claims up to 1500 AUD “free of charge” but this offer does not include: adjudication application, adjudicator costs, costs for an adjudication certificate should one be required and disbursement fees. In more realistic option “Fixed Fee adjudication” basic fees for small claims (up to 6500 AUD respectively up to 10 000 AUD) adjudication fee is 715 AUD/1000 AUD, and over 15000 AUD it is 2000 AUD. In higher claims sum for example 60 001-100 000 AUD adjudication flat rate from RICS is 6160 AUD. Also in this option RICS has reserved right to determine if the claim is admissible for fixed rate. In all rates only partial disbursement of administrative costs of adjudicator is covered, and e.g, in Victoria review of adjudication by adjudicator reviewer incurs flat fee 2200 AUD including GST + costs of reviewers hourly rate.

Other from between “authorized nominating authorities” Adjudicate Today has slightly different fee policy, including hourly rates of adjudicators (AUD 145 – 407) and adjudicaton certificate fee (AUD 115-825). In the “majority” of simple cases (without multiple submissions, without challenges against adjudication jurisdiction etc) Adjudicate Today statistics says that adjudication should be completed at 8 hours of adjudicator work.

Table: Case costs comparation

Case summary	RICS DRS	Adjudicate Today	JSM PCA
A			
Claim sum in AUD	*6 501*	*6 501*	*6 501 (5032,9)*
Fees of proceeding in total	**1100**	**1210**	* **731,92 (56**
Review fee if possible	2200 + 970	1452	max. 645,85 (max 500)
Fees grandtotal	**4270**	**2662**	**1377,77**
B			
Claim sum in AUD	26 000	26 000	26 000 (20 128)
Fees of proceeding in total	**3410**	**3960**	* **1706,85 (1**
Review fee if possible	2200 + 1212,5	1815	max. 1111,76 (max 860,70)
Fees grandtotal	**6822,5**	**5775**	**2 818,8**
C			
Claim sum in AUD	64 585	64 585	64 585 (50 000)
Fees of proceeding in total	**6 160**	**4620**	* **3 894,47 (**
Review fee if possible	2 200 + 1212,5	2 035	max. 2205,57 (max 1707,5)

Fees grandtotal	**9 572,5**	**6 655**	**6100,04**

** Calculated as 10 x hourly rate of the Grade 2 Adjudicator and Adjudication Certificate in Case B and as 10 x hourly rate of the Grade of the Senior Adjudicator and Adjudication Certificate in Case C.*

For purpose of review fee (review is e.g. admissible in Victoria) we calculated 4 x hourly rate for Case A and 5x hourly rate for Case B/C in both RICS DRS and Adjudicate Today, based on rate 242,5 AUD for RICS DRS (medium from published range) and 363 AUD (Grade 2 Adjudicator) for Adjudicate Today in A/B and 407 (Senior Adjudicator) in Case C.

Adjudicated claims are still only **provisionally decided and there is appeal** (in fact not obviously used, judging from published views of Australian colleagues) admissible to arbitration or courts of law, in the form of request for setting aside,
which is broader
than similar request admissible in arbitration (however in the JSM PCA arbitration with clause as drafted for present contract setting aside is excluded via referral to the section 192 swiss PILA). For internationally acting and expanding company vulnerable to the shipping, logistic, and other quickly incurring costs, and concurrently with not very long tradition in new market and not familiar with judiciary framework, any delays in proceedings are dangerous. It is thus our very strong advice to exclude adjudication and adopt arbitration clause in contract not as supplemental but as basic claims and disputes resolution tool.

Moreover adjudicators are not regularly of parties choice, but instead appointed by State´s government recognized appointing authority, what is not – especially during the present economic crisis – reasonable base for its neutrality, especially with regard to the great deals and deals with specific types of principals (consumers, public offices and bodies).

On the other side in arbitration facilitated by PCA JSM there are enrolled plenty of arbitrators familiar with continental and also common law (for common law especially respected

international arbitrator Veeraraghavan Inbavijayan, B.L., MCIArb, G-2, Plot # 108, Majestic Colony Main Road,Valasarawakkam, Chennai 600 087 India, for common and continental law influences especially Dr. Eugen Salpius, FCIArb, Franz-Josef-Strasse 15, 5020 Salzburg, Austria, and Mgr. Slavomír Jančok, ACIArb. Sirotárska 2 010 01 Žilina, Slovakia, all three as you can see are members of Chartered Institute of Arbitrators.)

While in the adjudication there are restriction on jurisdiction based on specifically state adopted Security of Payments Act (e.g. NSW Building and construction security of payments act 1999 contains plenty of restrictions in its section 7 (Application of this Act) subss. 2-3, international arbitration represent strictly uniform proceeding and consequently recognition and enforcement proceeding ruled by federal IAAA without disturbances and without possibility of protracted proceedings according namely section 25, subs. 4. of NSW Security of Payments Act (1999) or respective provisions of other Security of Payments Act.

Security of Payments Acts are prohibited to be contracted out, that means that in field of application of this Acts reasonable drafting is required. Please do not hesitate to turn back to us with any amendments or/and reservations in drafted wording. However above mentioned notices on arbitration v. adjudication are not intended to bypass mandatory applicability of Security of Payments Acts, indeed respective acts provide open room for arbitration (in above mentioned NSW legislation it is expressly stated in section 32 of the Act).