ARBITRATION AND INTERNATIONAL ARBITRAL CENTRES

Recent developments in the use of arbitration for the settlement of investment disputes is the subject of an article by S. Jarvin in [1984] International Financial Law Review 16. Mr. Jarvin is General Counsel of the ICC Court of Arbitration, Paris, and he contrasts conciliation with arbitration, and describes such developments as the new UNICITRAL arbitration rules; the use of institutionalised arbitration - the ICC, the London Court of Arbitration and the American Arbitration Association; the prospective innovation of the arbitral referee procedure adopted from the French institution "Le juge des reférés" who could make provisional decisions while a contract continued; arbitration and construction contracts; multi party arbitration and work on a model law of international arbitration.

The sixtieth birthday of the ICC Court of Arbitration was marked by a conference in October 1983. Some of the world's leading commercial arbitrators celebrated the occasion with appropriate éclat at a banquet, perhaps appropriately held in the Galerie des Batailles at the Palais de Versailles! A note of some of the comments made at the conference appears in ICC Business World January-March 1984 at 41, 42. Among the speakers were Professor Berthold Goldman, Sir John Donaldson, Eduardo Jiminez de Arechega (formerly of the ICJ) and Professor Pierre Lalive.

Meanwhile, it is perhaps timely for Australian lawyers to consider the legislation adopted in England to modify traditional English judicial supervision of the arbitral process. Australia is already on the brink of making important decisions as to the future growth of the financial industry. At [1984] Australian I.L. News 40-45 we reviewed the regime of International Financial Centre's (IFC's) in the US, and in this issue we briefly note the recommendations of the Whitlam Report. These proposals if adopted will probably increase the financial work available to the legal profession - indeed in this regard we separately note in this issue the Whitlam Report recommendation that foreign lawyers be allowed to practice foreign law in Australia. This increase will bring with it questions of dispute settlement including arbitration.

The British Parliament enacted the Arbitration Act, 1979 as a conscious effort to maintain the prominence of London as an international legal centre - which is associated to a great degree with the fact that London is one of the two leading international financial centres, perhaps the leading one. The Act attempts to eliminate scope for excessive interruption of artibration by references to the court, The distinguished commercial judge, the Hon. Mr. Justice Kerr argued that the case stated procedure in commercial arbitrations had been abused, sometimes by using appeal procedures merely to delay a final award. Judicial review is now only available on a more limited basis. Of perhaps greater interest is the procedure whereby the parties may by agreement exclude the right of appeal and the right to request judicial determination of a point of law: section 3(1). The parties cannot however preclude the jurisdiction of the courts to preclude misconduct of the arbitrators. The power of the parties to exclude the court is limited in domestic arbitration agreements, and in nondomestic agreements dealing with admiralty maritime or commodities

contracts. In the latter case the agreement to exclude is only effective if entered into after the commencement of arbitration or if it relates to a contract which is expressly governed by a law other than that of England or Wales. In other non-domestic arbitration the parties are free to exclude the court's jurisdiction at any time. A recent article on this development is D.W. Shenton and G.K. Toland, London as a Venue for International Arbitration: The Arbitration Act, 1979 [1980] 12 Law and Policy in International Business 643.

This legislation may provide a precedent to encourage the development of our major cities as potential international arbitration centres in the Pacific and South East Asian Zones With a highly skilled legal profession and a stable political environment this might well be another industry in which we enjoy a comparative advantage. A non unrelated matter is the revision of our law relating to sovereign immunity which in its present uncertain state might be a disincentive to the growth of international legal practice here, perhaps even a disincentive to the development of an international financial centre. Fortunately this is presently under the active consideration of the Australian Law Reform Commission, which has released a brief discussion paper and more detailed research papers on the topic. Its Report is likely to be issued in mid-1984.

D.P.