



Individuals, partnerships, unincorporated entities and insolvent parties

21 October 2011

Luka Kristovic Blazevic

ASA Below 40 Seminar

**Friday, 21 October 2011, Hotel The Dolder Grand,
Zürich, Switzerland**

-

Unusual and multiple parties in arbitration

Individuals, partnerships, unincorporated entities and insolvent parties

Luka Kristovic Blazevic

White & Case LLP, Paris

Telephone: +33 1 55 04 15 15

E-mail: lkristovicblazevic@whitecase.com

Outline

- I. **Individuals**
- II. **Partnerships and Unincorporated Entities**
- III. **Insolvent Parties**

Individuals

Situations Where Individuals Are Parties To Arbitration

- **Situations in international arbitration**
- **Situations in domestic arbitration**

Individuals – Practical Issues

- **A number of advantages of arbitration are relevant to individuals, e.g.:**
 - Expertise of arbitrators
 - Choice of seat / place of arbitration
 - Confidentiality / Privacy / Non-public proceedings
- **However, arbitration may not be adapted to the situation of many individuals:**
 - Especially for “weak parties” – e.g. consumers and employees
 - May be used by the stronger parties to deter such parties from bringing claims

Arbitration And Consumer Or Employment Law

- **Consumer Law**

- Arbitration clauses in consumer contracts may fall foul of consumer legislation
- In the EU, protection by legislation and by the ECJ
- However, an arbitration clause might not always be considered unfair

- **Employment Law**

- Position in France
- Position in the UK
- Position in the US

Class Arbitrations

- **Class actions are an important feature in some legal systems**
- **Used to be rare, but the American Arbitration Association (AAA) is currently administering nearly 300 class arbitrations**
- **The position of the US courts has fluctuated over time**

International Arbitration - Individuals In Investment Treaty Arbitration

- **Individual have been investing directly or can be a shareholder in a company incorporated in the host state (if covered by the relevant investment treaty)**
- **Standing: key issues of nationality**
- **Conditions to invoke any protections provided by a bilateral investment treaty (BIT) or multilateral investment treaty (MIT)**

Partnerships and Unincorporated Entities

Many Types Of Partnerships And Unincorporated Entities

- **Partnerships having the right to start proceedings**
- **Partnerships without the right to start proceedings**
- **Some types of associations**
- **Failed “corporations” or other entities**

Partnerships As Parties To Arbitration

- **Incorporated partnerships (with legal personality)**
- **Unincorporated partnerships (no legal personality)**
- **What if some partners refused to be joined to the proceedings?**

Insolvent Parties

Insolvency And Arbitration

- **As in previous recessions, insolvency is affecting increasing numbers of individuals and companies, potentially parties to arbitration agreements or engaged in arbitration proceedings**
- **Insolvency can occur:**
 - Before an arbitration request has been filed
 - After arbitration proceedings have been initiated
- **Conflict between:**
 - Arbitration proceedings; and
 - Insolvency proceedings

Practical Issues And Difficulties In Connection With Insolvency

- **Arbitrability of disputes**
- **Enforcement Issues**
- **Other Practical Issues**