NINETEENTH ANNUAL

WILLEM C. VIS
INTERNATIONAL COMMERCIAL ARBITRATION MOOT

Vienna, Austria
30 March – 5 April 2012

Organized by:

Association for the organisation and promotion of the
Willem C. Vis International Commercial Arbitration Moot

and

NINTH ANNUAL

WILLEM C. VIS (EAST)
INTERNATIONAL COMMERCIAL ARBITRATION MOOT

Hong Kong

19 to 25 March 2012

Organized by:

Vis East Moot Foundation Limited

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Horace Fasttrack
Advocate at the Court
75 Court Street
Capital City, Mediterraneo
Tel. (0) 146-9845
Telefax (0) 146-9850
Fasttrack@lawyer.me

15 July 2011

Secretariat
China International Economic Trade Arbitration Commission
6/F, CCOIC Building
No.2 Huapichang Hutong
Xicheng District, Beijing, 10035, P.R. China

Subject: Application for Arbitration [1]

Dear Sirs:

I represent Mediterraneo Elite Conferences Services, Ltd. Mediterraneo Elite Conferences Services, Ltd hereby submits five copies of its Application for Arbitration against Equatoriana Control Systems, Inc. I enclose a copy of my power of attorney to represent Mediterraneo Elite Conferences Services, Ltd in this arbitration.

The total claimed is USD 670,600 plus interest and costs. As noted, the claim is denominated in US dollars. At an exchange rate of 6.39935 CNY per USD, the claim is CNY 4,291,404. The Bank of China New York branch has been instructed to transfer the arbitration fee of CNY 127,285 to your account in Beijing.

The contract giving rise to this arbitration provides that the seat of arbitration is Vindobona, Danubia and that the arbitration will be in English.

The required documents are attached to the Application for arbitration.

Sincerely yours,
(Signed)
Horace Fasttrack

Attachment:

Application for Arbitration
Registration of Mediterraneo Elite Conferences Services, Ltd in Company register, Mediterraneo
Power of Attorney

[1] For purposes of the Moot, the CIETAC Arbitration Rules that come into force on 1 March 2012 are deemed to have come into force on 1 March 2011.

Mediterraneo Elite Conferences Services, Ltd, Claimant

v.

Equatoriana Control Systems, Inc, Respondent

Application for Arbitration

1. Claimant: Mediterraneo Elite Conferences Services, Ltd, a company incorporated under the laws of Mediterraneo.
Registered at 45 Conference Place, Capital City, Mediterraneo
Tel. (0) 486 25 00; Telefax (0) 486 25 11; E-mail: Info@Conferences.me
Person in charge: Samuel Trusty, Chairman of Board of Directors
Arbitral Agent: Horace Fasttrack
75 Court Street, Capital City, Mediterraneo
Tel. (0) 146-9845; Telefax (0) 146-9850; E-mail Fasttrack@lawyer.me

2. Respondent: Equatoriana Control Systems, Inc, a company incorporated under the laws of Equatoriana.
Address: 286 Second Avenue, Oceanside, Equatoriana
Tel. (0) 237 86 00; Telefax (0) 237 86 01; office@controls.eq

3. The Arbitration Agreement this Application Relies Upon: The arbitration clause—Article 15.1 of the Contract for the sale, installation and configuration of the master control system on the M/S Vis, No. 472/2010, signed by and between the Claimant, Mediterraneo Elite Conferences Services, Ltd, and the Respondent, Equatoriana Control Systems, Inc, (Claimant's Exhibit No. 1) reads: "Any dispute arising from or in connection with this Contract shall be submitted to the China International Economic and Trade Arbitration Commission for arbitration which shall be conducted in accordance with the Commission's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties. The arbitration shall take place in Vindobona, Danubia. The arbitration shall be in the English language."

4. Arbitral Claims:

1. The Respondent shall pay the claimant USD 670,600 in damages, representing:

a. USD 448,000 for the cost of chartering a substitute vessel for the M/S Vis, the substitute vessel having been chartered by Mediterraneo Elite Conferences Services, Ltd to provide conference services for the annual conference held by Worldwide Corporate Executives Association.

b. USD 60,600 for the standard Yacht broker commission of 15% of the rental cost.

c. USD 50,000 for the Yacht broker's success fee.

d. USD 112,000, the amount paid to Worldwide Corporate Executives Association to make partial refund of the conference fee paid by its members.

2. The Respondent shall pay the costs of arbitration, including claimant's expenses for legal representation, the arbitration fee paid to CIETAC and the additional expenses of the arbitration as set out in Article 50, CIETAC Arbitration Rules.

3. The Respondent shall pay the Claimant interest on the amounts set forth in items 1 and 2 from the date those expenditures were made by Claimant to the date of payment by respondent.

Facts

5. Mediterraneo Elite Conferences Services, Ltd (hereafter "Elite") operates high-end venues in which it provides a complete conference package. Its core strategy is to focus on small to medium sized businesses and professional associations that hold a "flagship" event at least once a year. The venues are designed to service events of a maximum of 150 persons. They combine the conference facilities proper, plus a luxury hotel and restaurant. Elite has a highly trained staff that works with the event teams of its customers to provide a top of the line service for demanding clients.

6. For the past ten years it has operated six land-based facilities in desirable locations in different countries. In spring 2010 it purchased a luxury yacht, the M/S Vis, for use as a seventh conference venue offering the same level of service as its land-based venues. Elite sought to refurbish the yacht with the latest in cabin and conference technologies, superior to anything otherwise available on the market. In particular, the conference technology had to meet the highest standards. Elite managed the refurbishment itself, using a range of subcontractors and suppliers.

7. The refurbishing of the M/S Vis was scheduled to be completed on 12 November 2010**.** Elite scheduled ten weeks for testing all of the systems prior to scheduling the first event. Elite contracted the supply and installation of the various elements of the on-board technology to a number of firms, including Equatoriana Control Systems, Inc (hereafter "Control Systems"). The contract with Control Systems was signed on 26 May 2010. (Claimant's Exhibit No. 1)

8. Control Systems was to supply, install and configure the master control system that is critical to venue operation, working with other specialist suppliers and installers to make sure everything functioned according to plan. The core element in the overall control system is a series of semi-configurable processing units. Manufacture of the processing units was to be done by Oceania Specialty Devices, incorporated in Oceania (hereafter "Specialty Devices").

9. Specialty Devices had designed the processing units to use the D-28 "super chip" recently announced by Atlantis High Performance Chips, incorporated in Atlantis (hereafter "High Performance"). The D-28 contained novel technology that offered significant improvements over rival chips. At 26 May 2010 the chip was not yet in production, but that was scheduled to begin in the middle of August 2010, i.e. in good time for the refurbishment. It was expected that it would be another six months, i.e. circa February 2011, before any rival chip with comparable qualities would be available.

10. The facilities on the M/S Vis would need a total of three of the processing units, installed in duplicate, to ensure an uninterruptible service. All of the units would need the D-28 chips in various numbers.

11. Worldwide Corporate Executives Association (hereafter "Corporate Executives") is a high profile organization of top level corporate executives and is a long standing client of Elite. The members of the association demand the very finest in comfort and efficiency in their meeting locations. During the meeting between Elite and Corporate Executives to plan the event, the Corporate Executives events team was delighted to be invited by Elite to be the first of their clients to hold an event on the M/S Vis. The event was scheduled 12 – 18 February 2011. The venue was a popular choice among the Association's members and the event was soon fully booked.

12. On 13 September 2010 Control Systems telephoned Elite and then confirmed in writing that the processing units for the control systems would not be available to it until at least late November. (Claimant's Exhibit No. 2) As a result, delivery of the control systems could not be expected before the middle of January 2011, with installation, configuration and verification to take another ten weeks or so.. The explanation given by Control Systems was that on 6 September 2010 there had been a fire at the facility where High Performance produced the D-28 chip. Production (which had started as scheduled in August) had ceased until the damage was repaired, which was expected to be about 24 October 2010. Specialty Devices currently expected delivery of the D-28 chips to it beginning of November. It in turn expected to deliver the processing units to Control Systems at the end of November 2010. The control systems would be delivered to the M/S Vis in the middle of January, at which time installation could begin.

13. High Performance had a limited supply of the chips in its warehouse when the fire occurred. The chips in the warehouse had not as yet been designated for a specific customer, although there were several, including Specialty Devices, to whom shipment was due. It had been expected that the balance of the various orders would have been filled from the production that was interrupted by the fire. There was not a sufficient supply in the warehouse to fulfill all of High Performance's contractual obligations by the various contractual due dates. Neither the contracts High Performance had with its customers nor the law of Atlantis required it to pro rate its immediately available supply among its customers. Even had there been such a requirement, anything less than the full contract amount would not have permitted Specialty Devices to finish the processing units it was manufacturing for Control Systems.

14. When High Performance informed Specialty Devices about the fire, it acknowledged that the Specialty Devices' order would require only a small portion of the stock in the warehouse and that it could have filled the order from its stock. It said, however, it intended to supply its regular customers to the extent possible from the limited supply available in the warehouse. Specialty Devices was neither a regular customer nor could it be expected to become one. (Claimant's Exhibit No. 3) High Performance expected delivery of the D-28 chips to Specialty Devices early in November 2010.

15. There was only one customer, Atlantis Technical Solutions, to which High Performance supplied chips from the warehouse prior to the resumption of production. There were several other customers who might well be described as regular customers. The real reason that High Performance supplied Atlantis Technical Solutions with the entire stock of chips in the warehouse was that the CEOs of the two firms were longstanding close friends who had served as witnesses at each other's weddings. (Claimant's Exhibit No. 7).

16. Once the D-28 chips became available to Specialty Devices on 2 November 2010, it completed the processing units and shipped them on 29 November 2010 to Control Systems. The control system was delivered by Control Systems to the M/S Vis on 14 January 2011. Installation, configuration and verification were completed on 11 March 2011. Payment of the full contract

price of USD 699,950 was made by Elite to Control Systems via the Mediterraneo National Bank on 21 March 2011.

17. When it became evident that the M/S Vis would not be available to host the Corporate Executives' event, Elite contacted it to discuss the alternatives. One of Elite's on-shore facilities was available, but the officials from Corporate Executives stated that the publicity for the event had emphasized that it would be held on a luxury yacht. They had received many positive comments from their membership and would not accept an on-shore venue as a substitute.

18. Making arrangements for a suitable substitute location for the Corporate Executives' event was rather expensive. After some effort, since there are very few comparable yachts, Elite was able to charter an appropriate substitute yacht, the M/S Pacifica Star, at a cost of USD 404,000 plus port and handling fees of USD 44,000. The standard brokerage commission was 15 % of the rental cost, USD 60,600. In addition, Elite paid the broker a USD 50,000 success fee on top of the commission. Finally, in order to retain the goodwill and future business from Corporate Executives, Elite made an ex gratia payment of USD 112,000 to Corporate Executives so that it could make a partial refund to the delegates to its event.

19. On 9 April 2011 Elite wrote Control Systems requesting it to contribute to the costs arising out of the delay in the installation of the master control system. (Claimant's Exhibit No. 4) Control Systems answered on 14 April 2011 categorically refusing. (Claimant's Exhibit No. 5) In turn Elite wrote on 25 April 2011 that Control Systems was legally responsible for those costs. Even after the fire the producer of the chip, Atlantis High Performance Chips, had had the possibility of supplying the chips needed for the processing units but had decided to allocate its entire stock of the D-28 chips to a company whose CEO was a close friend of its CEO. (Claimant's Exhibit No. 6) The last communication in this sequence was a letter from Control Systems rejecting all responsibility. (Claimant's Exhibit No. 8)

Applicable law

20. The choice of law clause, clause 15.2 of the contract, provides for application of the law of Mediterraneo. Mediterraneo and Equatoriana are party to the United Nations Convention on Contracts for the International Sale of Goods (CISG). Consequently, pursuant to CISG article 1(1)(a) the contract is governed by the convention.

21. Danubia has adopted the UNCITRAL Model Law on International Commercial Arbitration with the 2006 amendments. Danubia, Mediterraneo, Equatoriana, Oceania and Atlantis are party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

Conclusion

22. Control Systems did not deliver the master control system at the time required by the contract. Even though the delay in performance was caused by an impediment that Control Systems itself could neither overcome nor avoid, under CISG, article 79(2), Control Systems was not exempted from liability where it had engaged a third party (Specialty Devices) to perform the whole or a part of the contract unless that party met all of the conditions of CISG, article 79(1). Specialty Devices was not exempt under CISG, article 79(2), because the third party it had engaged to perform part of the contract (Atlantis High Performance Chips) could have overcome the impediment of the fire by allocating the "relatively small order" of D-28 chips to Specialty Devices from its stock in the warehouse.

23. The tribunal should, therefore, hold Control Systems liable to pay the damages set out in paragraph 4, above.

Sincerely yours,
(Signed)
Horace Fasttrack

15 July 2011

Contract Excerpts

472/2010

1. Equatoriana Control Systems, Inc hereby agrees with Mediterraneo Elite Conferences Services, Ltd to supply, install and configure the master control system for the M/S Vis.

2. The control system shall meet the technical specifications set out in Annex I.

3. Installation and configuration of the control system shall be completed by 12 November 2010.

4. The total contract price is USD 699,950. The price for the control system is USD 650,000. Installation and configuration is USD 49,950.

5. The price to be paid by letter of credit issued by the Mediterraneo National Bank against certification by Accurate Technical Consultants of completion of the contract.

15.1 Any dispute arising from or in connection with this Contract shall be submitted to the China International Economic and Trade Arbitration Commission for arbitration which shall be conducted in accordance with the Commission's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties. The arbitration shall take place in Vindobona, Danubia. The arbitration shall be in the English language.

15.2 This contract is subject to the law of Mediterraneo.

Claimant's Exhibit No. 2

Equatoriana Control Systems, Inc
286 Second Avenue
Oceanside, Equatoriana
Tel. (0) 237 86 00
Telefax (0) 237 86 01
office@controls.eq

13 September 2010

Mr. Joseph Alright
Mediterraneo Elite Conferences Services, Ltd
45 Conference Place
Capital City, Mediterraneo

Re: Contract 472/2010

Dear Mr. Alright:

I wish to confirm the information I gave you over the telephone earlier today.

We were informed by Oceania Specialty Devices by telephone, and confirmed by letter of 10 September 2010, that on 6 September 2010 there was a fire at the production facility of Atlantis High Performance Chips. The fire was severe enough that production of the D-28 chips has been interrupted.

Atlantis High Performance Chips does not expect to resume production until about 25 October. As a consequence, delivery of the chips to Oceania Specialty Devices is expected to take place early November. The processing units should be delivered to us end of November. Delivery of the control systems and the beginning of installation on the M/S Vis cannot be expected before the middle of January 2011.

This is highly unfortunate for all of us. I will let you know any further information that I receive in this matter.

Sincerely,
(Signed)
Samuel Horn

Encl: Letter 10 September 2010 from Henry Swenson to Gloria Martins

Claimant's Exhibit No. 3

Atlantis High Performance Chips
14 High Avenue
Technology Center, Atlantis

10 September 2010

Ms. Gloria Martins
Oceania Specialty Devices
322 Fortune Road
Oceania City, Oceania

Dear Ms. Martins:

I wish to confirm our telephone call of this morning.

The fire at our production facility on 6 September 2010 was more serious than we had thought at first. There will have to be a halt in our production of the D-28 chips that you have ordered for about seven weeks. As you may well imagine, this is a particularly bad time for such a fire to have happened, since the chips had just gone into commercial production.

We have only a limited supply of the chips on hand. There are nowhere enough to satisfy the orders we have received for them. This is, of course, a difficult situation for our customers as well as for us.

We have discussed within the firm on what basis we should allocate the limited stock available to us. We had considered filling small orders first, in which case we would have been able to fill your order from our stock. We had also considered allocating the stock on a pro rata basis. However, that would not have been satisfactory for the majority of our customers. Finally, we have decided to satisfy the needs of our regular customers first. As noted, your order was a relatively small one and it appears likely to remain the only one in the near future.

I can only express our regret that this unfortunate event has occurred. We look forward to fulfilling your need for specialty chips in the future.

Sincerely,
(Signed)
Henry Swenson

Mediterraneo Elite Conferences Services, Ltd
45 Conference Place
Capital City, Mediterraneo
Tel. (0) 486 25 00
Telefax (0) 486 25 11
Info@Conferences.me

9 April 2011

Mr. Samuel Horn
Equatoriana Control Systems, Inc
286 Second Avenue
Oceanside, Equatoriana

Re. Contract 472/2010

Dear Mr. Horn:

We are very pleased with the master control system that you have installed on the M.S Vis. It does everything that we had hoped for.

That makes it particularly unpleasant to raise the subject of the significant delay in the installation of the system. The contract date for delivery of the control system was early November. A comfortable period for installation, configuration and verification of the system were written into the contract. Specifically, everything was to be completed in January.

As you are aware, we had booked the annual conference of the Worldwide Corporate Executives Association for the period 12 to 18 February 2011. They were delighted that they were to be the first to hold an event on the M/S Vis. You can imagine their disappointment when we informed them that the yacht would not be available after all.

The Association is a high profile organization and we count it as one of our most important clients. It was not easy to find an appropriate substitute yacht to host the event. We finally did locate one, but it was very expensive. Altogether it cost us USD 670,600. I can, if you wish, furnish you with an itemized description of those costs.

We would suggest that it would be fair if you and we were to share in the costs arising out of the delay. That means that we would suggest that you reimburse us USD 335,300.

I hope that you understand and appreciate our position.

Sincerely
(Signed)
Joseph Alright

Claimant's Exhibit No. 5

Equatoriana Control Systems, Inc
286 Second Avenue
Oceanside, Equatoriana
Tel. (0) 237 86 00
Telefax (0) 237 86 01
office@controls.eq

14 April 2011

Mr. Joseph Alright
Mediterraneo Elite Conferences Services, Ltd
45 Conference Place
Capital City, Mediterraneo

Re: 472/2010

Dear Mr. Alright:

It is a pleasure to know that you are so satisfied with the master control system. The experience of working with your personnel was unusually gratifying. The M/S Vis should now be prepared to give many years of top quality service for your clients.

The delay in the installation of the control system was extremely unfortunate. I am sorry that it ended up being so expensive for you to find a replacement yacht to host the annual conference of the Worldwide Corporate Executives Association.

As you know, the delay was caused by the fire at Atlantis High Performance Chips. While we sympathize with your situation, we do not feel responsible in any way. Consequently, we cannot agree to share in the costs associated with the delay.

As a goodwill gesture, we will, however, be pleased to render any future servicing of the control system that may be necessary at standard rates less 20%.

Sincerely,
(Signed)
Samuel Horn

Claimant's Exhibit No. 6

Mediterraneo Elite Conferences Services, Ltd
45 Conference Place
Capital City, Mediterraneo
Tel. (0) 486 25 00
Telefax (0) 486 25 11
Info@Conferences.me

25 April 2011

Mr. Samuel Horn
Equatoriana Control Systems, Inc
286 Second Avenue
Oceanside, Equatoriana

Re: Contract 472/2010

Dear Mr. Horn:

I am very disappointed in your letter of 14 April. We made you a generous offer to share the cost arising out of the late installation of the master control system on the M/S Vis.

Our legal counsel has advised us that you are fully responsible for those costs. You must be aware of the article in the Technology Reporter of 20 September 2010 in which it is reported that Atlantis High Performance Chips sent all of the available chips to Atlantis Technical Solutions because the CEOs of the two firms were such close friends. I enclose a copy.

Although the fire was at the root of the problems, Atlantis High Performance Chips could have furnished all of the chips that were required from the stock in its warehouse, as Henry Swenson acknowledged to Gloria Martins in his letter of 10 September 2010. The consequences of the fire could have been overcome in regard to our chips, though perhaps not for everyone. As far as our contract is concerned, you are responsible for the actions of your supply chain and we have no contractual relationship with your suppliers.

Nevertheless, we were willing to share the costs with you.

If you continue to insist that you have no responsibility, we will have to pursue our rights in arbitration where we will ask for recovery of the full amount of our costs.

Sincerely
(Signed)
Joseph Alright

Encl: Article, Technology Reporter, 20 September 2010

Claimant's Exhibit No 7

Excerpt from
Technology Reporter
20 September 2010
Page 4

Consternation in high tech world

The fire at Atlantis High Performance Chips two weeks ago is causing more unhappiness in certain sectors than anticipated. The D-28 chip had been greeted with enthusiasm by the industry as a major advance on all similar products. Production of the D-28 chip had just begun when the fire occurred. That by itself would have been met with consternation by the trade at large and with some scarcely concealed relief by rival chip producers.

What is now causing unhappy comment in technology circles is that the entire supply of chips already produced has been shipped to Atlantis Technical Solutions with none of the other orders having been filled even to the extent of receiving a single chip as a token gesture. When Henry Swenson, CEO of Atlantis High Performance Chips, was accused of unduly favoring his old friend, Roger Abt, CEO of Atlantis Technical Solutions, he said that if it had not been for the support of Atlantis Technical Solutions during a particularly difficult period five years ago, "we would have gone out of business". Henry Swenson and Roger Abt were witnesses at each other's weddings.

Claimant's Exhibit No. 8

Equatoriana Control Systems, Inc
286 Second Avenue
Oceanside, Equatoriana
Tel. (0) 237 86 00
Telefax (0) 237 86 01
office@controls.eq

9 May 2011

Mr. Joseph Alright
Mediterraneo Elite Conferences Services, Ltd
45 Conference Place
Capital City, Mediterraneo

Re: 472/2010

Dear Mr. Alright:

I am surprised at the belligerent tone in your letter of 25 April. There is no cause for it.

Your legal counsel tells you one thing. Ours tell us the exact opposite.

If you intend to commence arbitration, the arbitrators will have to decide which of our lawyers is correct. I have confidence in mine. I have less confidence in yours.

Sincerely,
(Signed)
Samuel Horn

中国国际经济贸易仲裁委员会

CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION

地址：北京市西城区桦皮厂胡同 2 号国际商会大厦六层
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Tel: (86-10)8221778
Fax: (86-10)8221776, 6464350
E-mail: info@cietac.org

21 July 2011

Claimant: Mediterraneo Elite Conferences Services, Ltd
Arbitration Agent: Mr. Horace Fasttrack

By EMS

Dear Sir,

Re: Notice of Arbitration for Case No. M20110999

This is to acknowledge receipt on 15 July 2011 of your Application for Arbitration and attachments thereto in quintuplicate with Equatoriana Control Systems, Inc as the Respondent and receipt of your remittance for the arbitration fee in the sum of CNY 127,285.

The Secretariat hereby notifies you as follows:

I. Acceptance of the Case

We have taken cognizance of this case based on the arbitration clause contained in the Contract No. 472/2010 signed on 26 May 2010 by and between you and the Respondent.

II. Application of the Arbitration Rules

The Arbitration Rules of our Commission effective as from 1 March 2011 shall apply to this case. We now enclose a copy each of the Arbitration Rules and the Panel of Arbitrators of our Commission.

III. Notification to the Respondent

We are sending a Notice of Arbitration to the Respondent enclosing your Application for Arbitration and attachments thereto, together with our Arbitration Rules and the Panel of Arbitrators, and asking the respondent to respond in accordance with the Arbitration Rules.

IV. Appointment of Arbitrators

1. According to Article 23 of the Arbitration Rules, the case shall be submitted to a three-member tribunal.

2. You are required to appoint or entrust the Chairman of our Commission to appoint an arbitrator from among the Panel of Arbitrators and inform us of his/her name in writing within fifteen (15) days from receipt of this notice. If you fail to appoint or to entrust the Chairman of our Commission to appoint an arbitrator within the specified time period, the arbitrator shall be appointed by the Chairman of our Commission from among the Panel of Arbitrators.

3. You are required to contact directly with the Respondent to jointly appoint or entrust the Chairman of our Commission to appoint, a presiding arbitrator from the Panel of Arbitrators, and inform us jointly or separately of your decision in writing within fifteen (15) days from the Respondent's receipt of the Notice of Arbitration.

According to Article 25.3 of the Arbitration Rules, you and the Respondent may each recommend one to three arbitrators from among the Panel of Arbitrators as candidates for the presiding arbitrator and shall submit a list of recommended candidates to us within fifteen (15) days from your receipt of the Notice of Arbitration. Where there is only one common candidate in the lists, such candidate shall be the presiding arbitrator jointly appointed by the parties. Where there is more than one common candidate in the lists, the Chairman of our Commission shall appoint a presiding arbitrator from among the common candidates based on the specific nature and circumstances of the case. Where there is no common candidate in the lists submitted by you and the Respondent, the Chairman of our Commission shall appoint the presiding arbitrator.

If you and the Respondent fail to jointly appoint or to jointly entrust the Chairman of our Commission to appoint a presiding arbitrator in the above-mentioned manner, the Chairman of our Commission shall appoint the presiding arbitrator according to Article 25.4 of the Arbitration Rules.

V. Secretary for the Present Case

According to Article 13.3 of the Arbitration Rules, the Secretariat has designated Ms. Secretary of our staff to assist the arbitral tribunal in the procedural administration of the case. You may contact her at (0086 10) 8221778 by phone or at (0086 10) 8221776 by fax.

VI. Other Matters to Be Noted

1. Pursuant to the Arbitration Clause of the Contract No. 472/2010 signed on 26 May, 2010 by and between both parties and Article 71.1 of the Arbitration Rules, the English language shall be the official language to be used in this arbitration proceeding.

2. Pursuant to Article 19 of the Arbitration Rules, the parties shall submit all the documents in quintuplicate.

3. You may amend your claim according to Article 16 of the Arbitration Rules. However, the arbitral tribunal may not permit such amendment if it considers that the amendment is too late and may delay the arbitral proceedings.

4. For cases heard in camera, the parties, their representatives, witnesses and interpreters shall not disclose to any outsiders any substantive or procedural matters of this case according to Article 36 of the Arbitration Rules.

5. Pursuant to your submission, the Secretariat shall service all the documents, notices and written materials of this case to you at the following address, except sending in person or by fax.

Mr. Horace Fasttrack
Advocate at the Court
75 Court Street, Capital City, Mediterraneo

If there is any alteration to the above address in the arbitral proceedings, please notify us promptly.

The Secretariat looks forward to providing both parties with timely, good-quality and efficient services in the arbitration proceedings and hopes that both parties shall proceed with the arbitration in bona fide cooperation for an expedient and appropriate settlement of the disputes involved in this case.

Yours sincerely,

The Secretariat
China International Economic and Trade
Arbitration Commission (CIETAC)

Encls: 1. The Arbitration Rules
2. The Panel of Arbitrators
CC: Respondent: Equatoriana Control Systems, Inc

中国国际经济贸易仲裁委员会

CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION

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Tel: (86-10)8221778
Fax: (86-10)8221776, 6464350
E-mail: info@cietac.org

21 July 2011

Respondent: Equatoriana Control Systems, Inc

By EMS

Dear Sir/Madam,

Re: Notice of Arbitration for the Case No. M20110999

The Claimant, Mediterraneo Elite Conferences Services, Ltd has filed an Application for Arbitration in regard to the dispute arising under the Contract No. 472/2010 signed on May 26, 2010 by and between you and the Claimant. The Secretariat now encloses the Claimant's Application for Arbitration and attachments thereto together with our Arbitration Rules effective as from 1 March 2011 and the Panel of Arbitrators, and notifies you as follows:

I. Acceptance of the Case

In accordance with the arbitration clause contained in the contract, we have taken cognizance of this case.

II. Application of the Arbitration Rules

The Arbitration Rules effective as from March 2011 shall apply to this case.

III. Appointment of Arbitrators

1. According to Article 23 of the Arbitration Rules, the case shall be submitted to a three-member tribunal.

2. You are required to appoint or entrust the Chairman of our Commission to appoint an arbitrator from among the Panel of Arbitrators, and inform us of his/her name in writing within fifteen (15) days from receipt of this notice. If you fail to appoint or to entrust the Chairman of our Commission to appoint an arbitrator within the specified time period, the arbitrator shall be appointed by the Chairman of our Commission from among the Panel of Arbitrators.

3. You are required to contact directly with the Claimant to jointly appoint or entrust the Chairman of our Commission to appoint, a presiding arbitrator from the Panel of Arbitrators, and inform us jointly or separately of your decision in writing within fifteen (15) days from your receipt of the Notice of Arbitration.

According to Article 25.3 of the Arbitration Rules, you and the Claimant may each recommend one to three arbitrators from among the Panel of Arbitrators as candidates for presiding arbitrator and shall submit the list of recommended candidates to us within fifteen (15) days from your receipt of the Notice of Arbitration. Where there is only one common candidate in the lists, such candidate shall be the presiding arbitrator jointly appointed by the parties. Where there is more than one common candidate in the lists, the Chairman of our Commission shall appoint a presiding arbitrator from among the common candidates based on the specific nature and circumstances of the case. Where there is no common candidate in the lists, the Chairman of our Commission shall appoint the presiding arbitrator.

If you and the Claimant fail to jointly appoint or to jointly entrust the Chairman of our Commission to appoint a presiding arbitrator in the above-mentioned manner, the Chairman of our Commission shall appoint the presiding arbitrator according to Article 25.4 of the Arbitration Rules.

IV. Business License, Certificate of Legal Representative and Power of Attorney

1. Please submit to the Secretariat within fifteen (15) days from receipt of this notice a copy of your business license in quintuplicate and one original Certificate of Legal Representative and its copy in quadruplicate.

2. Please produce one original Power of Attorney and its copy in quadruplicate to the Secretariat of our Commission if you decide to have an agent(s) to participate in the arbitral proceedings on your behalf.

V. Defense and Counterclaim

1. According to Article 14.1 of the Arbitration Rules, you shall file a Statement of Defense in writing with us within forty-five (45) days from receipt of this notice. Your failure to file a Statement of Defense shall not operate to affect the arbitral proceedings according to Article 14.4 of the Arbitration Rules.

2. The Statement of Defense submitted by you shall include the contents stipulated in Article 14.2 of the Arbitration Rules.

3. According to Article 15.1 of the Arbitration Rules, you shall file with us your counterclaim in writing, if any, within forty-five (45) days from receipt of this notice, and shall pay an arbitration fee in advance according to the Arbitration Fee Schedule attached to the Arbitration Rules.

4. You may apply for an extension of the time periods stated in the foregoing paragraphs 1 and 3 if there is a justified ground. The arbitral tribunal shall decide whether to accept such application. The arbitral tribunal also has the power to decide whether to accept a Statement of Defense or counterclaim submitted beyond the above time limit.

5. You may amend your counterclaim, but the arbitral tribunal may not permit such amendment if it considers that the amendment is too late and may delay the arbitral proceedings.

VI. Secretary for the Present Case

According to Article 13(3) of the Arbitration Rules, the Secretariat has designated Ms. Secretary of our staff to assist the arbitral tribunal in the procedural administration of the case. You may contact her at (0086 10) 8221778 by phone or at (0086 10) 8221776 by fax.

VII. Other Matters to Be Noted

1. Pursuant to Article 19 of the Arbitration Rules, the parties shall submit all the documents for this case in quintuplicate.

2. For cases heard in camera, the parties, their representatives, witnesses and interpreters shall not disclose to any outsiders any substantive or procedural matters of this case under Article 36 of the Arbitration Rules.

3. We shall send you the notice of arbitration for this case to the following address as submitted by the Claimant.

Equatoriana Control Systems, Inc
286 Second Avenue
Oceanside, Equatoriana

Please confirm your address as soon as possible.

The Secretariat looks forward to providing both parties with timely, good-quality and efficient services in the arbitration proceedings and hopes that both parties shall proceed with the arbitration in bona fide cooperation for an expedient and appropriate settlement of the disputes involved in this case.

Sincerely yours,

The Secretariat
China International Economic and Trade
Arbitration Commission (CIETAC)

Encl.:
1. Application for Arbitration and Its Appendix

2. The Arbitration Rules
3. The Panel of Arbitrators

CC: Claimant: Mediterraneo Elite Conferences Services, Ltd
Arbitration Agent: Mr. Horace Fasttrack

Horace Fasttrack
Advocate at the Court
75 Court Street
Capital City, Mediterraneo
Tel. (0) 146-9845
Telefax (0) 146-9850
Fasttrack@lawyer.me

2 August 2011

Ms. Secretary
Secretariat
China International Economic Trade Arbitration Commission
6/F, CCOIC Building
No.2 Huapichang Hutong
Xicheng District, Beijing, 10035, P.R. China

Mediterraneo Elite Conferences Services, Ltd, Claimant v. Equatoriana Control Systems, Inc, Respondent
Case No. M20110999

Dear Sirs:

I should like to acknowledge receipt of your communication of 21 July 2011 in which you acknowledged receipt of the Request for Arbitration submitted by Mediterraneo Elite Conferences Services, Ltd.

Claimant, Mediterraneo Elite Conferences Services, Ltd, appoints Ms. Arbitrator 1 as the claimant appointed arbitrator. Ms. Arbitrator 1 is not on the CIETAC Panel of Arbitrators. Her appointment is made pursuant to Article 25(1) of the CIETAC Rules. Her CV is attached.

Claimant and respondent, Equatoriana Control Systems, Inc, have agreed to appoint Professor Presiding Arbitrator as chairman of the tribunal. Professor Presiding Arbitrator is on the CIETAC Panel of Arbitrators and is a native of Danubia, where the arbitration will take place. Professor Presiding Arbitrator has agreed with the two parties that he would be willing to chair the tribunal.

Sincerely yours,
(Signed)
Horace Fasttrack

Attach. CV Ms. Arbitrator 1

Joseph Langweiler
Lawyer
14 Capital Boulevard
Oceanside, Equatoriana
Tel. (0) 214 77 32
Telefax (0) 214 77 33
langweiler@host.eq

3 August 2011

Ms. Secretary
Secretariat
China International Economic Trade Arbitration Commission
6/F, CCOIC Building
No.2 Huapichang Hutong
Xicheng District, Beijing, 10035, P.R. China

Mediterraneo Elite Conferences Services, Ltd, Claimant v. Equatoriana Control Systems, Inc, Respondent
Case No. M20110999

Dear Sirs:

I refer to your letter of 21 July 2011 addressed to Equatoriana Control Systems, Inc conveying a notice of arbitration in the referenced case.

Equatoriana Control Systems, Inc has instructed me to respond to the letter on their behalf. My power of attorney is attached.

Equatoriana Control Systems, Inc appoints Dr. Arbitrator 2 as the respondent appointed arbitrator. Since he is not a member of the CIETAC Panel of Arbitrators, the appointment is made pursuant to CIETAC Rules, Article 25(1). The CV of Dr. Arbitrator 2 is attached.

I have conferred with Mr. Horace Fasttrack, counsel for claimant in this arbitration, and we have agreed on Professor Presiding Arbitrator as the chair of the panel. Professor Presiding Arbitrator is a resident of Vindobona, Danubia, where the arbitration is to take place and is a member of the CIETAC Panel of Arbitrators.

Sincerely yours,
(Signed)
Joseph Langweiler

Attach:
Power of attorney, original and one copy
Business License, Equatoriana Control Systems, Inc, five copies
Certificate of Legal Representative, five copies
CV Dr. Arbitrator 2

中国国际经济贸易仲裁委员会

CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION

地址：北京市西城区桦皮厂胡同 2 号国际商会大厦六层
邮编：100035
电话：(86-10)8221778
传真：(86-10)8221776, 6464350
电子信箱：info@cietac.org

Add: 6/F CCOIC Building, 2 Huapichang Hutong, Xicheng District, Beijing, 100035, P. R. China
Tel: (86-10)8221778
Fax: (86-10)8221776, 6464350
E-mail: info@cietac.org

10 August, 2011

Dear Professor Presiding Arbitrator, Ms. Arbitrator 1 and Dr. Arbitrator 2

Re：Notice of Arbitration for Case No. M20110999

Concerning the captioned arbitration case between the Claimant Mediterraneo Elite Conferences Services, Ltd and the Respondent Equatoriana Control Systems, Inc, the Claimant has appointed Ms. Arbitrator 1 as an arbitrator in this case; the Respondent has appointed Dr. Arbitrator 2 as an arbitrator in this case. Both parties have jointly appointed Professor Presiding Arbitrator as the presiding arbitrator.

The Secretariat of CIETAC is writing to inquire whether you will accept such appointment.

I. Please be advised that:

(a) As required by the CIETAC Arbitration Rules and the Rules of Arbitrators, an arbitrator shall not represent each party and shall remain independent of the parties and treat them equally. If you accept the appointment, please affix your signature to the enclosed DECLARATION, disclose in writing any circumstances that may cause justifiable doubt regarding your independence or impartiality, and return it to the CIETAC as soon as possible.

(b) In light of the rules regarding relevant time limits as stipulated in the Arbitration Rules, before accepting the appointment, please make sure you have the time to devote yourself to the arbitral proceeding of the case.

II. Under the Arbitration Rules, the arbitral proceedings are confidential.

III. Information relevant to the dispute is provided for your consideration as follows:

(a) Claimant: Mediterraneo Elite Conferences Services, Ltd
Arbitration Agents: Mr. Horace Fasttrack

(b) Respondent: Equatoriana Control Systems, Inc
Arbitration Agents: I Joseph Langweiler
(c) Procedural Rules: CIETAC Arbitration Rules effective as from 1 March, 2011
(d) Amount under dispute: USD 670,600 plus interest and costs
(e) Type of Dispute: Contract for the sale, installation and configuration of control system

(f) Arbitration Language: English

To facilitate the establishment of the Arbitral Tribunal and to advance the arbitral proceedings of the case, your reply within 5 business days of the receipt of this letter will be very much appreciated. If you accept the appointment, please affix your signature to the enclosed DECLARATION and return it to CIETAC promptly. Such DECLARATION and written disclosure will be forwarded to the parties to the dispute. The parties shall, under Article 30.1 of the Arbitration Rules, decide whether a challenge is to be filed.

The Secretariat of CIETAC looks forward to providing you with prompt, good and effective service.

Sincerely yours,

The Secretariat
China International Economic and Trade
Arbitration Commission (CIETAC)

Encl.: DECLARATION (blank)

中国国际经济贸易仲裁委员会

CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION

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Fax: (86-10)82217766, 64643500
E-mail: info@cietac.org

ARBITRATOR'S DECLARATION OF ACCEPTANCE AND STATEMENT OF INDEPENDENCE

Case No. M20110999

Claimant: Mediterraneo Elite Conferences Services, Ltd
Arbitration Agent: Mr. Horace Fasttrack

Respondent: Equatoriana Control Systems, Inc
Arbitration Agent: Mr. Joseph Langweiler

(Please mark the relevant box or boxes)

ACCEPTANCE

☐ I hereby declare that I accept to serve as arbitrator in the captioned case. In so declaring, I confirm that I have familiarized myself with the requirements of CIETAC Rules of Arbitration and Ethical Rules for Arbitrators and am able to serve as an arbitrator accordingly.

INDEPENDENCE

☐ I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no facts or circumstances, past or present, that need to be disclosed because they might be of such nature as to call into question my independence or impartiality in the eyes of any of the parties.

OR

☐ I confirm that I know of no circumstance that may lead to my withdrawal under the CIETAC Rules of Arbitration or Ethical Rules for Arbitrators before I accept to serve as arbitrator, and I will act impartially, independently, efficiently and diligently as an arbitrator. However, I wish to call your attention to the following facts or circumstances which I hereafter disclose because there exists such relationship with the party/parties or their counsel as to call into question my independence in the eyes of any of the parties.

DISCLOSURE DUTY

I will disclose immediately, during the case proceedings, if I know of any facts or circumstances that might be of such a nature as to call into question my independence and impartiality.

Signature:

Date:

Arbitrator 1
14 Advocate Way
Oceanside, Mediterraneo
Tel: (0) 614-1570
Fax: (0) 614-1571
arbitrator1@lawyers.me

22 August 2011

Secretariat
China International Economic Trade Arbitration Commission
6/F, CCOIC Building, No.2
Huapichang Hutong
Xicheng District, Beijing, 10035, P.R. China

Case No. M20110999

Dear Sirs:

Dear Sirs:

I enclose the requested Declaration of Acceptance and Statement of Independence to serve as arbitrator in the above referenced arbitration.

Sincerely yours,
(Signed)
Arbitrator 1

Encl.

Declaration of Acceptance and Statement of Independence

NOTE; A similar letter accompanied by the Declaration were sent by the two other arbitrators.

中国国际经济贸易仲裁委员会

CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION

地址：北京市西城区桦皮厂胡同 2 号国际商会大厦六层
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Fax: (86-10)82217766, 64643500
E-mail: info@cietac.org

ARBITRATOR'S DECLARATION OF ACCEPTANCE AND STATEMENT OF INDEPENDENCE

Case No. M20110999

Claimant: Mediterraneo Elite Conferences Services, Ltd
Arbitration Agent: Mr. Horace Fasttrack

Respondent: Equatoriana Control Systems, Inc
Arbitration Agent: Mr. Joseph Langweiler

(Please mark the relevant box or boxes)

ACCEPTANCE

X I hereby declare that I accept to serve as arbitrator in the captioned case. In so declaring, I confirm that I have familiarized myself with the requirements of CIETAC Rules of Arbitration and Ethical Rules for Arbitrators and am able to serve as an arbitrator accordingly.

INDEPENDENCE

X I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no facts or circumstances, past or present, that need to be disclosed because they might be of such nature as to call into question my independence or impartiality in the eyes of any of the parties.

OR

□ I confirm that I know of no circumstance that may lead to my withdrawal under the CIETAC Rules of Arbitration or Ethical Rules for Arbitrators before I accept to serve as arbitrator, and I will act impartially, independently, efficiently and diligently as an arbitrator. However, I wish to call your attention to the following facts or circumstances which I hereafter disclose because there exists such relationship with the party/parties or their counsel as to call into question my independence in the eyes of any of the parties.

DISCLOSURE DUTY

I will disclose immediately, during the case proceedings, if I know of any facts or circumstances that might be of such a nature as to call into question my independence and impartiality.

Signature:

(Signed)
Arbitrator 1

Date: 22 August 2011

中国国际经济贸易仲裁委员会

CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION

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E-mail: info@cietac.org

30 August 2011

Claimant: Mediterraneo Elite Conferences Services, Ltd
Arbitration Agent: Mr. Horace Fasttrack

Respondent: Equatoriana Control Systems, Inc
Arbitration Agent: Mr. Joseph Langweiler

Dear Sirs,

Re: Notice on the Formation of Arbitral Tribunal for Case No. M20110999

Concerning the captioned arbitration case, we hereby notify the parties as follows:

1. The Claimant appointed Ms. Arbitrator 1 as the arbitrator while the Respondent appointed Dr. Arbitrator 2 as the arbitrator. Both parties have jointly appointed Professor Presiding Arbitrator as the presiding arbitrator. The afore-mentioned three arbitrators have formed the arbitral tribunal to hear this case.

2. The copies of the Declarations signed by the three arbitrators are attached hereto.

Sincerely yours,

The Secretariat
China International Economic and Trade
Arbitration Commission (CIETAC)
Encl.

中国国际经济贸易仲裁委员会

CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION

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E-mail: info@cietac.org

30 August 2011

Presiding Arbitrator: Professor Presiding Arbitrator

Arbitrator: Ms. Arbitrator 1, Dr. Arbitrator 2

Dear Sir/Madam,

Re: Notice on the Formation of Arbitral Tribunal for Case No. M20110999

Concerning the captioned arbitration case between the Claimant Mediterraneo Elite Conferences Services, Ltd and the Respondent Equatoriana Control Systems, Inc, the Claimant appointed Ms. Arbitrator 1 as the arbitrator while the Respondent appointed Dr. Arbitrator 2 as the arbitrator. Both parties have jointly appointed Professor Presiding Arbitrator as the presiding arbitrator.

The Secretariat has received the three arbitrators' Declarations of Independence and transferred them to the parties. According to the Arbitration Rules, the afore-mentioned three arbitrators formed the arbitral tribunal on 30 August 2011 to hear this case.

The Secretariat now transfers the parties' documents to you and notifies you as follows:

1. The Tribunal, upon its formation, shall be responsible for the procedural issues of this case. The Secretariat hopes that the Tribunal will resolve the disputes involved in this case efficiently and appropriately in accordance with the relevant laws and the Arbitration Rules.

2. The CIETAC Arbitration Rules (hereinafter referred to as "CIETAC Rules"), effective as from 1 March 2011, are applicable to the present case.

3. According to Article 46.1 of the Arbitration Rules, the Arbitral Tribunal shall render an arbitral award within six (6) months from the date on which the Tribunal is formed, that is, on or before 29 February 2012. Such time period may be extended by the Secretary-General of CIETAC according to the Arbitration Rules. However, the Tribunal is expected to carry on the arbitration process efficiently.

4. According to Article 49 of the Arbitration Rules, the arbitral tribunal shall submit its draft award to CIETAC for scrutiny before signing the award. CIETAC may remind the tribunal of

issues in the award on condition that the tribunal's independence in rendering the award is not affected.

Sincerely yours,

The Secretariat
China International Economic and Trade
Arbitration Commission (CIETAC)

Encl.: Claimant's Application for Arbitration and its attachments

Joseph Langweiler
Lawyer
14 Capital Boulevard
Oceanside, Equatoriana
Tel. (0) 214 77 32
Telefax (0) 214 77 33
langweiler@host.eq

2 September 2011

Ms. Secretary
Secretariat
China International Economic Trade Arbitration Commission
6/F, CCOIC Building
No.2 Huapichang Hutong
Xicheng District, Beijing, 10035, P.R. China

Mediterraneo Elite Conferences Services, Ltd, Claimant v. Equatoriana Control Systems, Inc, Respondent
Case No. M20110999

Dear Ms. Secretary:

I hereby forward to you five copies of the statement of defense of Equatoriana Control Systems, Inc.

Sincerely,
(Signed)
Joseph Langweiler

Encl.

Mediterraneo Elite Conferences Services, Ltd, Claimant

v.

Equatoriana Control Systems, Inc, Respondent

Case No. M20110999

Statement of Defense

1. Respondent has no independent knowledge as to the statements in paragraphs 1, 4, 5, 6, 11, 17 and 18 of the application for arbitration.

2. Respondent accepts the statements in paragraphs 2, 3, 7 to 10, 12 to 14, 16 and 19 to 21 of the application for arbitration.

3. Respondent accepts the first sentence of paragraph 15. Respondent does not know whether there were other customers that might be described as regular customers of Atlantis High Performance Chips. Nor does it know whether the fact that the CEO of Atlantis High Performance Chips and the CEO of Atlantis Technical Solutions were good friends was the "real reason" that all of the chips available to Atlantis High Performance Chips immediately after the fire were delivered to Atlantis Technical Solutions.

4. Respondent denies paragraphs 22 and 23.

Affirmative defense

5. Claimant, Mediterraneo Elite Conferences Services, Ltd (hereafter Elite), states that, after the fire at the production facility of Atlantis High Performance Chips, the latter could have delivered all the D-28 chips needed for the master control system from the amount already produced and in its warehouse. It further states that the only reason the chips were not delivered to Oceania Specialty Devices was because of the close friendship between the CEO of Atlantis High Performance Chips (hereafter High Performance) and the CEO of Atlantis Technical Solutions, to whom the entire stock in the warehouse at the time of the fire was delivered. This speculation is based upon a news story in the Technology Reporter. (Claimant's Exhibit No. 7) Equatoriana Control Systems, Inc (hereafter Control Systems) accepts that the entire supply of D-28 chips in the warehouse was delivered to Atlantis Technical Solutions and that the two CEOs were good friends. This, however, is not enough to reach the factual conclusion that that was the only reason the chips were delivered to Atlantis Technical Solutions.

6. It also does not prove that, even if that was the reason, the necessary amount of chips would have been delivered from the stock in the warehouse to Oceania Specialty Devices. The available chips might have been allocated on a pro rata basis among all of the orders placed with High Performance. In that case Oceania Specialty Devices would have received some chips, but not enough to fabricate all of the processing units for the M/S Vis.

7. Assuming that Elite is able to convince the tribunal at the appropriate time that High Performance could have performed its contractual obligations to Specialty Devices, Control Systems would nevertheless not be liable to Elite. CISG, Article 79(1) provides that "[a] party is not liable for a failure to perform any of its obligations if he proves that the failure was due to an impediment beyond his control ..." The impediment to Control System's performance, which

was the failure to receive the processing units from Oceania Specialty Devices, was certainly beyond its control. Article 79(2) goes on to say that where the respondent's "failure is due to the failure by a third party whom he has engaged to perform the whole or a part of the contract", ie Specialty Devices, is exempt under the conditions of article 79(1). (Emphasis added) Specialty Devices also could not meet its contractual date of delivery of the processing units to Control Systems for reasons that were beyond its control, ie the failure of High Performance to deliver the D-28 chips to it at the contractual date of performance.

8. In order to be free from liability CISG, Article 79(1) also requires that the party that fails in its performance "could not reasonably be expected ... to have overcome [the impediment] or its consequences." Control Systems could not have overcome the failure to receive the D-28 chips on time. Conceivably High Performance could and should have overcome the impediment to its performance with Specialty Devices, at the expense of its performance to its other customers, which we argue would not be a reasonable position to take.

9. Elite would have the tribunal hold that Control Systems as seller of the master control system is responsible for the failure of its entire supply chain to perform on time. (Request for Arbitration, para. 22 and Claimant's Exhibit No. 6) That may be true in regard to the quality of the goods, since the seller affirmatively delivers the goods to the buyer. It cannot be true in regard to late performance. As noted in paragraph 7, the responsibility for the actions of a third party is to a third party he has engaged to perform the whole or a part of the contract. Control Systems had no dealings with High Performance. It cannot be held responsible for any alleged failings on the part of High Performance.

Damages

10. The damages claimed by Elite have several items that should not be recoverable under any circumstances.

11. Elite made an ex gratia payment of USD 112,000 to Corporate Executives to make a partial refund of the conference fee to those of its members who had registered for the conference on the M/S Vis. An ex gratia payment is a voluntary payment. Control Systems cannot be liable to reimburse a voluntary payment made by Elite.

12. Elite claims that the payment was to "retain the goodwill and future business from Corporate Executives." (Application for Arbitration, paragraph 18) There is no suggestion in the record that Corporate had made any demand for such a payment or that it had threatened to withdraw future business. Elite's belief that it would help retain future business was pure speculation and the payment should not be recoverable.

13. The payment of the USD 50,000 yacht broker's success fee raises more troubling issues. According to an article in the Convention Business News of 25 July 2011 the "success fee" paid by Elite to its yacht broker was passed in part to the personal assistant of Samuel Goldrich, the individual owner of the M/S Pacifica Star, to effect an "introduction" to Mr. Goldrich. (Respondent's Exhibit No 1) The personal assistant was subsequently arrested on charges that of accepting bribes to influence Mr. Goldrich in his various financial affairs.

14. According to the Criminal Code of Pacifica, article 1453, it is illegal for an employee to accept any money or other item of value to assist a third person to obtain or retain business with the employer. (Claimant's Exhibit No. 2) Elite should not even have considered claiming this payment made under its authority as damages in this arbitration.

15. The bribery which facilitated the rental of the M/S Pacifica Star raises a further and more serious issue in regard to the claim for damages. The entire lease contract is tainted by the corruption abetted by Elite's agent. The arbitral tribunal should rule that it has no authority to consider the contract for the lease of the M/S Pacifica Star or its consequences.

Challenge to Dr. Elisabeth Mercado as member of Elite Legal Team

16. We have been notified by Mr. Horace Fasttrack that Dr. Elisabeth Mercado has been added to the team of counsel representing Elite. We challenge her participation on the Elite legal team and request the tribunal to rule that she should cease all activities in this arbitration. If the challenge to Dr. Mercado is not accepted by the tribunal, we reserve our right to challenge Professor Presiding Arbitrator for the reasons that will be evident.

17. It is important to begin with the position of Professor Presiding Arbitrator. As is known to the entire tribunal, he is the Schlechtriem Professor of International Trade Law (ITL) at Danubia National University. At Danubia National University, the ITL faculty covers (inter alia) Sales Law (including CISG) and International Commercial Arbitration. Professor Presiding Arbitrator is a world-renowned specialist in trade law but arbitration, per se, is not his focus. He sits on the Management Committee of the ITL Faculty and thereby is responsible with the other members of the Committee for all ITL activities, including arbitration. Although he is not a specialist in arbitration, he sits as arbitrator in investor-state arbitrations including ICSID as well as in WTO arbitrations and occasionally in commercial disputes. It is because of this broad experience that he was designated as the presiding arbitrator in this arbitration by the joint agreement of the two parties.

18. Dr. Mercado is a Visiting Lecturer at Danubia National University, teaching the International Commercial Arbitration courses. She secured her Visiting Lectureship following a public application process of which she had been unaware until she received a telephone call from someone who introduced herself as the Professor Presiding Arbitrator's assistant and said she was calling on his behalf. Dr. Mercado was shortlisted along with one other and was selected after interview by a panel of three, chaired by Professor Presiding Arbitrator.

19. She delivers approximately 50% of the arbitration lectures, the remaining 50% being delivered by members of the Faculty's full-time staff. She is paid per lecture and is not salaried but is treated as a third party service supplier for payment and tax purposes. The Tax Authorities have accepted this and no issue arises as to her employment status.

20. In the past, Dr. Mercado had spent time as General Counsel in a large international trading company. As a consequence, in addition to her arbitration lectures she delivers lectures to the ITL Faculty as part of Professor Presiding Arbitrator's course on international trade, focusing on the "real world" of international commerce as opposed to the black-letter law. As a consequence, Dr. Mercado has occasional contact with Professor Presiding Arbitrator, but the majority of her contact is with the ITL Faculty's full-time staff, particularly the several Course Directors. Face-to-face, she calls him "Peter" but in company normally adopts the more formal "Professor".

21. Dr. Mercado is very good with children and is on first name terms with the Professor's four, aged between 10 and 20. She is godmother to the youngest of the Professor's children. She is also on first name terms with his wife. The two women occasionally meet in the city for lunch or a coffee.

22. Dr. Mercado has appeared as Counsel before Professor Presiding Arbitrator in three previous arbitrations. In the first two, Dr. Mercado's client was successful with a unanimous tribunal. In the third case, Dr. Mercado's client was unsuccessful on a majority decision with Professor Presiding Arbitrator issuing a Dissenting Opinion in her client's favor. In none of the three cases were Dr. Mercado's client's opponents aware of the connections between Dr. Mercado and Professor Presiding Arbitrator. Therefore, no question of a challenge ever arose.

23. We bring to your attention that the Code of Ethics of Dr. Mercado's Bar Association does not address the facts of this case. Nevertheless, the relationship between Dr. Mercado and Professor Presiding Arbitrator is so close that the tribunal should rule that Dr. Mercado should withdraw from the legal team representing Elite. To repeat paragraph 16, above, if the challenge to Dr. Mercado is not accepted by the tribunal, we reserve our right to challenge Professor Presiding Arbitrator as arbitrator in this case.

Relief Requested

24. The respondent requests the tribunal to:

1. Decide that Dr. Elisabeth Mercado shall terminate her role in the legal team representing Elite;
2. On the merits decide that Equatoriana Control Systems is exempt from liability for the late delivery and installation of the master control system on the M/S Vis;
3. Decide that, if Equatoriana Control Systems is held liable for the delay, the ex gratia payment of USD 112,000 is not an allowable item of damages;
4. Decide that the payment of USD 50,000 as the yacht broker's "success fee" that was used by the broker in part to pay a bribe is not an allowable item of damages;
5. Decide that the corruption in the procuring of the lease contract for the M/S Pacifica Star renders all costs associated with that lease contract not allowable items of damages;
6. Award the costs of arbitration including the cost of legal representation to Equatoriana Control Systems.

(Signed)
Joseph Langweiler

2 September 2011

The conference business does not often lead to the criminal courts, which is what makes the events in Pacifica so unusual.

The conference delegates at the annual meeting in February of the World Wide Corporate Executives Association were satisfied. Mediterraneo Elite Conference Services was relieved. The meeting had been scheduled to be held on the M/S Vis, the new super floating conference center that has been talked about so much in conference circles.

As was reported in Convention Business News on 28 September 2010, the refurbishing of the M/S Vis was delayed by the anticipated late delivery of the novel conference technology. The opening conference on the newest addition to Elite Conference Services' list of luxury venues was to be the Association's annual meeting. The choice was popular with the membership. There was dismay when it was reported that a substitute location would be necessary.

The Association insisted the conference should be held on a super yacht. Time was short and the supply of possible alternatives was restricted. There was general relief when it became possible to rent the M/S Pacifica Star, the super yacht owned by Samuel Goldrich.

That was the beginning of the troubles. A source close to the transaction stated that unbeknown to Elite Conference Services its yacht broker had passed some of a USD 50,000 "success fee" to the personal assistant of Mr. Goldrich for an "introduction". That is bribery under the laws of Pacifica, though not in Mediterraneo where Elite is based. Further investigation showed that the personal assistant had been receiving similar payments for help in doing business with Mr. Goldrich.

Although it appears that no one from Elite Conference Services knew about the bribery until contacted by the Pacifica police, it is an unhappy ending for them for what otherwise was a successful conference.

Respondent's Exhibit No. 2

Criminal Code of Pacifica

Article 1453. (1) It shall be unlawful to pay, promise to pay, or authorize payment of any money, or other item of value to an employee of a third person or company in order to obtain or retain business with that third person.

(2) It shall be unlawful for an employee or agent to receive any money or other item of value to assist the provider of the money or other item of value to obtain or retain business with the employer or principal.

中国国际经济贸易仲裁委员会

CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION

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9 September 2011

Claimant: Mediterraneo Elite Conferences Services, Ltd
Arbitration Agent: Mr. Horace Fasttrack

Respondent: Equatoriana Control Systems, Inc
Arbitration Agent: Mr. Joseph Langweiler

By EMS

Dear Sirs,

Re: Arbitration Case No. M20110999

Concerning the captioned arbitration case, we now enclose to the Claimant a copy of the "Statement of Defense" submitted by the Respondent.

According to Articles 6.2 and 6.3 of the Arbitration Rules, any arguments as to the jurisdiction of the tribunal should be made to the tribunal, which has been delegated by CIETAC to make a decision on such jurisdiction when necessary.

Sincerely yours,

The Secretariat
China International Economic and Trade
Arbitration Commission (CIETAC)

Encl.

CC: Professor Presiding Arbitrator, Ms. Arbitrator 1, Dr. Arbitrator 2

Mediterraneo Elite Conferences Services, Ltd, Claimant

v.

Equatoriana Control Systems, Inc, Respondent

Case No. M20110999

Procedural Order No. 1

1. The tribunal decided during a conference call on 5 October 2011 that the presiding arbitrator was authorized to make procedural decisions subject to later confirmation by the full tribunal.

2. A conference call was arranged for 6 October 2011 between Mr. Fasttrack, Mr. Langweiler and the presiding arbitrator of the tribunal to discuss the arrangements for the arbitral procedure. Because of conflicting calendars, it was necessary to set longer periods of time than would normally be expected. The following schedule was agreed:

Submission of a memorandum for claimant: 8 December 2011
Submission of a memorandum for respondent: 19 January 2012

Oral arguments in Hong Kong: 19 - 25 March 2012
Oral arguments in Vienna: 30 March – 5 April 2012

3. The agreed upon schedule will render it impossible for the tribunal to render an award within the six month time limit imposed by Article 46(1) of the CIETAC Arbitration Rules. The tribunal will, therefore request the Secretary General of CIETAC for an extension pursuant to Article 46(2).

4. Mediterraneo Elite Conferences Services, Ltd initiated the arbitration to recover damages arising out of the late delivery of the conference technology for installation on the M/S Vis.

5. Equatoriana Control Systems, Inc has raised several defenses on the merits of the dispute.

a. It asserts that it is exempt from liability under the provisions of CISG, Article 79.

b. It asserts that, even if found liable, it should not be held liable for the ex gratia payment of USD 112,000 paid by Mediterraneo Elite Conferences Services, Ltd to Worldwide Corporate Executives Association, whose conference could not be held on the M/S Vis as scheduled.

c. It also asserts that it should not be held liable for the USD 50,000 success fee paid to the yacht broker, part of which was allegedly used to pay the personal assistant of the owner of the yacht eventually leased for the Worldwide conference, even though the payment to the personal assistant was unbeknownst to Claimant at the time of payment of the success fee.

d. It further asserts that the fact that the success fee in part was used to bribe the personal assistant taints the entire lease contract with corruption and that consequently no expense arising out of that contract should be considered as allowable damages.

6. Equatoriana Control Systems, Inc has also asked the tribunal to order that Dr. Elisabeth Mercado be removed from the legal team representing the Claimant because of her relationship with the presiding arbitrator.

7. The factual issues that may need to be developed will be determined in accordance with the procedures found in the Rules of the Nineteenth Annual Willem C. Vis International Commercial Arbitration Moot. In accordance with those Rules questions may be submitted to Professor Eric Bergsten by e-mail at eric.bergsten@chello.at, by Thursday, 27 October 2011. The answers to the requests for clarification will be distributed in Procedural Order No. 2 as promptly thereafter as possible.

(Signed)
Professor Presiding Arbitrator
President of the arbitral tribunal

7 October 2011

Mediterraneo Elite Conferences Services, Ltd, Claimant

v.

Equatoriana Control Systems, Inc, Respondent

Case No. M20110999

Procedural Order No. 2

1. Has the Secretary General of CIETAC approved the request made by the Arbitral Tribunal to extend the 6-month time limit for rendering the award?

Yes, he has done so.

2. Has the Respondent raised a jurisdictional argument when it states that the tribunal should rule "that it has no authority to consider the contract for lease of the M/S Pacifica Star or its consequences" or is it arguing on the merits?

This is not a factual question that can be answered in this Procedural Order. The tribunal will be interested to learn upon which legal theory the objection has been raised. Normally, the issue should be argued first by the Respondent so that the Claimant knows which theory it must counter. However, in these proceedings (the Moot) the Claimant will have to decide which of the theories it considers the more likely when preparing the memorandum, but it may have to argue against both of them in the oral arguments.

3. Can or should there be an argument on the amount of interest claimed or whether the costs of arbitration can be recovered?

No. The issues in regard to damages should be limited to the defenses raised by the Respondent. There would be another opportunity in the arbitration for Elite and Control Systems to argue in regard to interest and arbitration costs (but this would be after the Moot is over).

4. Did the contract between Equatoriana Control Systems, Inc and Mediterraneo Elite Conferences Services, Ltd contain any sort of limitation of liability?

No, it did not.

5. Does Annex I contain the specification that the D-28 Chip is needed?

No. The specifications related primarily to performance.

6. Was Elite aware that the manufacture of the processing units was to be done by a third party and not by Control Systems?

It did not know it specifically, but Elite knew that it was common that a party from whom it procured a product would have purchased that product or some elements of it from a third party.

7. What was the overall total number of processing units to be installed in the master control system?

Six processing units were to be installed. Three were necessary to operate the system. Another three were necessary in order to assure uninterruptible performance.

8. What was the cause of the fire?

It started by a short circuit in an electrical installation. The fire inspectors ruled it to be an accident.

9. If distributed pro rata, would D-28 chips available in the warehouse have sufficed to make the master control system function?

Yes.

10. Were there other customers of High Performance that could be described as regular customers?

Yes, there were several who were regular customers.

11. Was it possible for Specialty Devices or for Respondent to acquire D-28 chips from Atlantis Technical Solutions, even for a higher price?

Specialty Devices had approached Atlantis Technical Solutions to see whether it could purchase the number of D-28 it would need for the processing units, but Atlantis Technical Solutions had refused.

12. Could Specialty Devices have used a different chip when it was not going to receive the D-28 chips on time?

As stated in the Application for Arbitration para. 9, "Specialty Devices had designed the processing units to use the D-28 "super chip"." Redesign around a substitute chip with a different specification to the D-28 would have involved severe delay and costs while providing no guarantee of comparable performance given the unique qualities of the D-28. Alternatively, without redesign the processing units could have used another chip only if that chip was in effect a "clone" of the D-28 from another manufacturer. Even ignoring inherent intellectual property issues the "cloning" of the D-28 by another manufacturer would also have involved delay and costs.

13. Is Control Systems a contracting partner of both, High Performance and Specialty Devices or did it contract only with Specialty Devices?

It contracted only with Specialty Devices.

14. When was Control Systems informed that the annual conference of the Worldwide Corporate Executives Association was scheduled to be held on the M/S Vis 12 – 18 February 2011?

It was informed about the conference on 5 August 2010.

15. Did the Claimant and the Respondent communicate with one another regarding the contract between 13 September 2010 and 9 April 2011?

There were communications between the technical personnel about the installation. None of those communications mentioned any issue in regard to the fact that the conference of the Worldwide Corporate Executives Association had had to be rescheduled. There were no communications between the corporate officials following the telephone call and letter from Control Systems on 13 September 2010 until the letter from Elite on 9 April 2011.

16. Why did Claimant pay Respondent the full contract price of USD 699,950 on 21 March 2011 when the delay had already occurred?

According to the contract (Claimant's Exhibit No. 1), the contract price was paid by the Mediterraneo National Bank in accordance with a letter of credit issued by it when it received certification by Accurate Technical Consultants of the completion of the installaton.

17. Would Elite have lost less money following the late delivery of the control system if it had repudiated its contract with Corporate Executives rather than acting in the way it did?

It would have lost more money in respect of this contract. Moreover, repudiation of the contract might have led Corporate Executives to use a different conference service for its future conferences.

18. Did the contract concluded between Elite and Corporate Executives specify that the Corporate Executives' 12-18 February 2011 event be held on board the M/S Vis?

Yes, the contract provided that the conference would be held on board the M/S Vis. As stated in the Application for Arbitration, when Elite informed Corporate Executives that the M/S Vis would not be available, Corporate Executives would not accept an on-shore venue as a substitute

19. Was the registration fee for the conference on the M/S Pacific Star lower than that of the tickets to the event on the M/S Vis?

Not as such. However, the refund to the delegates by Corporate Executives effectively reduced the registration fee.

20. Did Corporate Executives request a refund to it in order to make a partial refund to its members who had registered for the conference?

It did not make a direct request for a refund. However, during the conversations between Elite and Corporate Executives about the arrangements for the conference Corporate Executives expressed its unhappiness that the conference would not be taking place on the M/S Vis. It acknowledged that the M/S Pacifica Star was an appropriate replacement, but it did not have all of the features that had been advertised to the membership. Elite then suggested the possibility to refund some of the fee already paid by Corporate Executives to Elite which Corporate Executives could pass on to the members who had registered for the conference. Corporate Executives indicated that that would be appreciated by it and by its members.

21. Was the request of the Claimant to its yacht broker to charter an appropriate yacht or to charter Mr. Samuel Goldrich's yacht specifically?

The request was to charter an appropriate yacht. There are very few yachts that would have met Elite's needs and, with the exception of Mr. Goldrich's, those yachts were not available for lease during the necessary time period. Mr. Goldrich did not normally lease his yacht, though he had done so on a few occasions.

22. Was the success fee paid before or after signing the rent contract with Mr. Goldrich?

When the yacht broker became aware that the M/S Pacifica Star might be available, he reported his findings to Elite. Elite then promised the success fee of USD 50,000 in addition to the normal brokerage fee if the broker was able to secure the contract. Nothing was said about what it might take for the broker to secure the contract. The actual payment of the success fee was made after the signing of the contract.

23. Is it customary for a yacht broker to receive a "success fee"?

No, but it happens from time to time. It depends on the circumstances. In this case it was evident that the broker had had a difficult time locating a luxury yacht that would meet the needs of Elite to service the contract with Corporate Executives.

24. Did the Corporate Executives' conference take place according to the original schedule, between February 12 - 18, 2011 on M/S Pacifica Star?

Yes. The dates were important to Corporate Executives since they had been advertised those dates to the membership and many of the members who planned to attend had already made various commitments that would have been difficult for them to change.

25. What was the relationship of the country of Pacifica to the facts of this case?

Mr. Goldrich was a resident of Pacifica and the M/S Pacifica Star was registered there.

26. Was the assistant of Mr. Goldrich convicted by the competent national criminal court of Pacifica of committing the alleged bribery at issue?

Yes, he was convicted of receiving the bribe described in the statement of defense as well as three additional counts of receiving a bribe on other occasions.

27. **Is the behavior of the assistant of Mr. Goldrich in accepting a bribe/success fee criminal with respect to Danubia, Equatoriana or Mediterraneo?**

It is a criminal offense in all three countries to offer a bribe to a foreign government official to procure a contract with the government of that foreign country, but the legislation does not cover the same behavior in respect of an official of a private company. Similarly, it is a criminal offense for a government official in Danubia, Equatoriana and Mediterraneo to accept a bribe. All three countries are party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

28. Did Samuel Goldrich know about the bribe?

Mr. Goldrich did not know of this or of any of the other payments made to his assistant at the time the payments were made. When he became aware of it, he notified the prosecuting authorities.

29. When did Mr. Fasttrack notify Mr. Langweiler, counsel for the Respondent, that Dr. Mercado had been added to the Elite legal team?

30 August 2011. This was the first time that Dr. Mercado had worked with Mr. Fasttrack.

30. Are Respondent's statements contained in paras. 16-23 of the Statement of Defense concerning the relationship between Dr. Mercado and Professor Presiding Arbitrator true?

The statements in paragraphs 16 through the first sentence of paragraph 23 are true. The remainder of paragraph 23 are arguments on the part of the Respondent.

31. Why was Dr. Mercado called by the assistant to Professor Presiding Arbitrator even though Dr. Mercado had not known of the public application process?

Although there had been a number of applications for the Visiting Lectureship, the committee at Danubia National University wished for additional applications. Dr. Mercado was one of several individuals contacted in the same way that she had been. Dr. Mercado had lectured at several universities on international commercial law and international arbitration and was highly regarded in the field.

32. What brought it about that Dr. Mercado became the godmother of Professor Presiding Arbitrator's youngest child?

As indicated, the Dr. Mercado had a good relationship with Professor Presiding Arbitrator's wife and his children. It was the wife who asked Dr. Mercado to be the godmother. This occurred in October 2010.

33. Does Dr Mercado work for a law firm or is she self-employed?

Dr. Mercado does not practice law on a full time basis. As an expert in arbitration law she is often asked for her advice or is engaged as a member of a team representing a client in an arbitration or in proceedings before the courts relating to arbitration.

34. How was it decided that Professor Presiding Arbitrator was to be the chairman of the arbitral tribunal? Did the proposition come from Mr. Horace Fasttrack or from Mr. Joseph Langweiler?

Professor Presiding Arbitrator was an obvious choice. The arbitration clause called for the arbitration to take place in Danubia. Professor Presiding Arbitrator was on the CIETAC Panel of Arbitrators, was from Danubia and had the appropriate experience. Both Mr. Fasttrack and Mr. Langweiler had come to the conclusion independently to suggest him as the presiding arbitrator.

35. When did Professor Presiding Arbitrator learn that Dr. Mercado had been added to Claimant's legal team?

Professor Presiding Arbitrator learned that Dr. Mercado had been added to the Claimant's legal team on 12 September 2011 when he received the statement of defense.

36. Did Professor Presiding Arbitrator submit a new statement of independence once he was aware of Ms. Mercado's involvement?

No, he did not. The declaration he made when originally appointed, noted on p. 30 of the Problem, was the only statement he filed. In that declaration he checked the first of the two boxes under "Independence" on the CIETAC form "Arbitrator's Declaration of Acceptance and Statement of Independence."

37. Did Professor Presiding Arbitrator and Dr. Mercado know each other at the time of the three previous arbitral proceedings as referred to in paragraph 22 in Respondent's Statement of Defense?

Yes, Dr. Mercado was lecturing at Danubia National University at the time of the three previous arbitrations.

38. At the time of any of the past arbitrations where Dr. Elisabeth Mercado acted as counsel and Professor Presiding Arbitrator was an arbitrator, was Dr. Mercado in regular contact with the Professor's wife?

Yes. Their friendship had begun soon after Dr. Mercado had been appointed as Visiting Lecturer.

39. What role did Elite envision Dr Elisabeth Mercado would have in the arbitration?

Elite did not engage Dr. Mercado itself. She was engaged by Mr. Fasttrack as part of the team representing Elite because of her expertise in arbitration. The specific role she would have would be determined by the progress of the arbitration.

40. Do bar rules, codes and guidelines applicable in Danubia treat the type of conflict of interest as the one possibly existing in the case of Dr. Mercado?

There is nothing in the relevant rules in Danubia that discuss conflicts of interest in arbitration. That is left to the rules of the administering arbitral organization or the conflict rules of the International Bar Association.

41. Are the Technology Reporter and Convention Business News legitimate sources of information or tabloid newspapers? What is the level of credibility of the information they provide?

They are both reputable sources of information. For the purpose of these proceedings the statements in the two publications are to be taken as correct without the need for further confirmation.

(Signed)
Professor Presiding Arbitrator
President of the arbitral tribunal

1 November 2011