UNCITRAL Newsletter

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At a glance...

In the past few months, the UNCITRAL Secretariat has issued ***six new CLOUT issues*** *(224, 225, 226, 227, 228 and 229) featuring* ***53 new cases*** *from Australia, Canada, Colombia, Egypt, France, Germany, Hong Kong China, India, Malaysia, Mauritius, New Zealand, Philippines, Romania, Serbia, Singapore, Slovenia, South Africa, Sweden, Türkiye, United Kingdom of Great Britain and Northern Ireland, United States of America and Zambia. The new cases* ***relate to the following UNCITRAL texts****: United Nations Convention on Contracts for the International Sale of Goods (CISG), United Nations Convention on the Limitation Period in the International Sale of Goods (Limitation Convention), United Nations Convention on the Carriage of Goods by Sea – The "Hamburg Rules" (HR), UNCITRAL Model Law on Cross-Border Insolvency (MLCBI), UNCITRAL Model Law on Electronic Commerce (MLEC), UNCITRAL Model Law on International Commercial Arbitration (MAL) and United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards – The "New York Convention" (NYC).*

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* As this is the first issue of a new series of UNCITRAL CLOUT Newsletters, this exceptional newsletter covers a six-month period instead of four.

We are pleased to welcome two new National Institutional Partners in the CLOUT Network: the **Faculty of Law at Ain Shams University (Cairo, Egypt)** and the **International Business Law Master, Department of Law and Economics of Productive Activities of the Faculty of Economics, Universitá La Sapienza (Rome, Italy)**

The CLOUT Team welcomes any CLOUT Network contributor who would like to make **short contributions** to the Newsletter and **provide ideas** as part of the relaunch of the CLOUT Newsletter series.

The CLOUT Team takes this opportunity to wish you a **Happy Holiday Season and A Prosperous and Happy 2024!**

Cases in focus

We have slighly refocused the CLOUT Newsletter. To the extent possible, new issues will feature specific CLOUT cases that may be of interest to the CLOUT Network community. This time, the focus is on the impact of social media messaging on contracts, and MLCBI's interconnection with enterprise group insolvency.

Case 2086: MLEC 7; 11

South West Terminal Ltd. v. Achter Land | 8 June 2023
Canada: King's Bench for Saskatchewan

The plaintiff is a grain and crop trading company, and the defendant is a farming corporation supplying grain, both parties having their place of business in Saskatchewan, Canada. Over the preceding decade, the defendant had supplied the plaintiff with grain under deferred sales contracts. In March 2021, a representative of the plaintiff sent a text message to suppliers, including a representative of the defendant, proposing the purchase of flax for delivery later in the year. The defendant's representative reacted to the text message with a telephone call. Based on that conversation, the plaintiff's representative prepared a contract for the purchase of 86 metric tons of flax at a price of $17.00 per bushel with a delivery period listed as "Nov", applied his ink signature to the contract, took a photo of the signed contract with his mobile phone and sent the photo to the defendant's representative with a text message: "Please confirm flax contract". The defendant's representative texted back a "thumbs-up" emoji. However, the defendant did not deliver the flax to the plaintiff in November 2021. At the end of that month, the spot price for flax was $41.00 per bushel.
Regarding contract formation, the Court found that the parties had established a practice of concluding contracts by exchanges of messages with mobile phones, and that the defendant's representative had previously agreed to contracts that the defendant had eventually performed by texting "Ok", "Yup" and similar expressions in reply, and that therefore the parties had agreed to the use of that procedure and technology to conclude binding contracts. Based on that practice, as well as the general understanding of the meaning of a "thumbs-up" emoji to express agreement, the Court found that, by sending the emoji, the defendant's representative had accepted the contractual offer, rather than acknowledged its receipt as submitted by the defendant. The Court also found that, under the circumstances, a "thumbs-up" emoji was "an action in electronic form" that could be used to express acceptance as recognized by section 18 of the Electronic Information and Documents Act, 2000 ("EIDA"), which enacts article 11 MLEC for the province of Saskatchewan. The Court also discussed whether the contract complied with the written form and signature requirements contained in the Sale of Goods Act of Saskatchewan. After referring to the relevant provisions of the EIDA, the Court indicated that a "thumbs-up" emoji, albeit a non-traditional means to sign a document, was a valid way under the circumstances to fulfill the two functions of an electronic signature, i.e., to identify the signatory through his unique cell phone number and to convey his acceptance of the flax contract, as outlined in section 14 EIDA, which enacts article 7 MLEC.

Case 2067: MLCBI 2; 17(1)(a)

Agrokor | 28 August 2017
Serbia: Commercial Court of Belgrade
Abstract prepared by Marko Radović
[Keywords: *enterprise group*; *foreign proceeding*; *recognition*]

In considering a request for recognition of foreign main proceeding of extraordinary administration proceedings commenced in Croatia with respect to the debtor and its subsidiary companies, the Court noted that the Law on the Extraordinary Administrative Proceedings in Companies of Systemic Importance for the Republic of Croatia[1] was applied in Croatia to the Croatian proceeding and that that law was different from the Bankruptcy Act of Croatia aimed at the collective settlement of creditors' claims by realizing assets and distributing them to creditors.
The Court applied the criteria for recognition of a foreign proceeding found in articles 174(2) [2(a) MLCBI] and 183 [17(1)(a) MLCBI] of the Law on Bankruptcy of Serbia, namely that a proceeding in a foreign State must be: (a) a judicial or administrative proceeding pursuant to a law relating to insolvency; and (b) conducted with the aim of collective settlement of creditors through reorganization, bankruptcy, or liquidation. The Court dismissed the request for recognition as it found that the Croatian proceeding did not meet those criteria because: (a) the Croatian proceeding was carried out over the debtor's subsidiary companies that were not insolvent; and (b) the Croatian proceeding was not a proceeding aiming at the collective settlement of financial difficulties of the debtor since the goal of that proceeding was mainly to protect the national interests of the Republic of Croatia by ensuring sustainability of the debtor as a company of systematic importance for the Republic of Croatia.

[1] Applicable to all companies of systemic importance to the Republic of Croatia and to members of a group that operated outside of Croatia if the group had a principal place of business in Croatia and existed under the Croatian law.

Universities, training centres, arbitration centres, law professors, judges and other interested law practitioners can contribute to the CLOUT collection even if they are not National Correspondents. They are strongly encouraged to contact UNCITRAL at uncitral@un.org for information.