

President's Message

Arbitration is on the move everywhere. Not only are 'classical' arbitration cases increasing in number, arbitration is also branching out into new areas which were traditionally reserved to court proceedings.

Just one recent example from the US – On June 23, 2003, the US Supreme Court paved the way for class arbitrations (*Green Tree Financial Corp v. Bazzle*). The Court held that class actions can be resolved by arbitration provided that the contracts at issue do not preclude this possibility. In addition, it was ruled that the arbitrators, not the courts, are to decide whether class arbitration is permitted because 'it concerns contract interpretation and arbitration procedures'. It is likely that contracts will be drafted from now on so as to expressly exclude class arbitration. However, it also seems likely that courts may deem such exclusions to be unenforceable.

Arbitration is in the move in Switzerland too. Sports arbitration, for instance, is booming and Court of Arbitration for Sport (CAS) is progressively consolidating its position as the 'world court' for international sports disputes. In May 2003, CAS received strong support from the Swiss Federal Supreme Court, which rejected a challenge of a CAS award rendered between four athletes and the IOC (Decision of 27 May 2003, P. 264-267-268-270/2002*). The Federal Court held that CAS is an independent tribunal issuing 'true' arbitration awards under Chapter 12 of the PIL Act even where the IOC, its main promoter, is a party in the proceedings. While the Federal Court had already confirmed CAS's independence vis-à-vis international federations in the 1992 *Gundel* decision, CAS's independence vis-à-vis the IOC had been an open issue up until this recent decision.

Even more importantly, CAS will soon be the sole appellate body for international doping disputes worldwide. Indeed, in March 2003, all international sports federations and about 80 governments approved the so-called World Anti-Doping Code prepared by the World Anti-Doping Agency (WADA), which establishes uniform rules on doping and doping sanctions. The Code provides that all appeals from decisions of sports governing bodies in international doping matters must be brought before CAS. This will undoubtedly increase the role of CAS and reinforce the status of Switzerland as the market leader in sports arbitration.

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Commercial arbitration in Switzerland is also expanding. Figures recently published by the ICC are significant in this respect (Bulletin of the ICC International Court of Arbitration, Spring 2003). In 2002, Switzerland provided the largest number of arbitrators (152 followed by the United States with 140, the UK with 109 and France with 95). Moreover, Switzerland is the place of arbitration most often used (111 times). Interestingly, Swiss substantive law also often governs the dispute (English law comes first, followed by Swiss and then French law). This is very positive news.

The active involvement of Switzerland in ICC arbitration, the evolution of sports arbitration and the new uniform arbitration rules soon to be launched by the Swiss Chambers of Commerce are complementary. These factors all contribute to the continued development of Switzerland as an arbitration venue, and require that Swiss arbitration practitioners strive to meet the high standards which the rest of the world has come to expect from a preferred forum for international arbitration.

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Gabrielle Kaufmann-Kohler