

President's Message

I hope you all have in the meanwhile received Volumes No. 26 and 27 of ASA's Special Series. Volume No. 26 comprises the speakers' presentations at the ASA 2006 Annual Conference on 'Best Practices in International Arbitration'. What are the issues that as yet lack consensus or general acceptance as best practice? Where does it make sense to strive for harmonization and where is it appropriate to maintain diversity? I hope you find the answers, given in the papers, thought provoking. Volume No. 27 is the Second Edition of ASA's Glossary of terms and abbreviations used in international arbitration and ADR. It is meant to ease communication and understanding in our field. I hope you will find it a useful tool. Should you not yet have received these issues of the ASA Special Series, or if you wish to receive additional copies thereof, please let the ASA Secretariat know.

Further, I am pleased to inform you that in June the National Council of the Swiss Federal Parliament approved a revision of Art. 186 of the Swiss Private International Law Act (PILA), which governs international arbitration in Switzerland. The revision addresses concerns raised by the Swiss arbitration community following the Fomento decision rendered by the Swiss Federal Court in 2001. In that decision, the Court held that Art. 9 PILA was applicable to international arbitration proceedings in Switzerland with the consequence that an arbitral tribunal sitting in Switzerland had to stay the proceeding if an action concerning the same object was already pending abroad between the same parties – and if, in addition, it could be expected that the foreign court will, within reasonable time, render a decision that would be recognizable in Switzerland. The Court's decision was criticized as contradicting the principle of competence-competence of arbitral tribunals and as creating opportunities for obstruction and delaying tactics by parties that sought to evade arbitration clauses to which they had previously agreed. The revision provides for a new Art. 186(4) stating that arbitral tribunals sitting in Switzerland shall decide on their jurisdiction even if a lawsuit on the same matter between the same parties is already pending before a state court or another arbitral tribunal, unless good reasons require a

stay of the proceedings. I am pleased to report that the new provision almost exactly reflects a legislative proposal submitted by ASA. Hopefully, the second chamber of the Swiss Parliament, the State Council will add its approval to the revision in the Parliament's September Session which means that the revision could enter into force in February 2007. We will keep ASA members posted.

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Markus Wirth