

## The Bulletin in Brief

This issue contains three articles. First, *Christopher Boog* analyses recent developments in this field and pleads for the **introduction of an emergency arbitrator procedure in the Swiss Rules of International Arbitration**, whereby an arbitrator could be appointed before the constitution of the arbitral tribunal, with the sole purpose of addressing a request for interim relief.

*Pierre-Yves Tschanz* then discusses, and largely approves, the motion pending before the Swiss Parliament to add a **Subsection 2 to Article 7 of the PIL Act**, which currently directs Swiss courts to dismiss for lack of jurisdiction any case where an arbitral tribunal assumes jurisdiction, so as to provide that **the courts must defer their jurisdictional decision until the arbitral tribunal has decided on its own jurisdiction**.

Finally, *Richard Bamforth* and *Katerina Maidment* examine recent English case law in order to identify the extent of the onus on the tribunal to afford the parties a **reasonable opportunity to present their case**, and, as a corollary, to identify the onus on the parties themselves to ensure that their case is comprehensively set out and that their opponent's case is comprehensively answered.

As usual, you will find abstracts of the case law published in the Introduction to the **Case Law** Section (p. 498), including the following:

- the decision of 13 April 2010 in which the Swiss Federal Supreme Court **for the first time set aside an arbitral award for violation of procedural public policy** (Art. 190(2)(e) PIL Act), where the arbitral tribunal had wrongly disregarded a binding decision (*res judicata*) of a Swiss commercial court in the same matter;
- three Supreme Court decisions of 10 and 11 January 2010 on requests to set aside awards for irregular composition of the arbitral tribunal (Art. 190(2)(a) PIL Act) and in which the courts took into consideration and analysed the application of the **IBA Guidelines on Conflicts of Interest** to the cases at hand;
- A decision of 9 June 2009 in which the Supreme Court examined the challenge of an award on the basis of a **violation of due process** (Art. 190(2)(d) PIL Act) **where the arbitral tribunal had allegedly applied contractual and legal provision in a manner which took the parties by surprise** and took into account the

plaintiff's representation in the arbitration by experienced business lawyers; and

- A decision of 13 April 2010 which deals with the **application to set aside a decision on interim measures captioned as a preliminary award** in a WIPO arbitration, but which the Supreme Court found was a mere decision on provisional measures, and not an award so that it could not be challenged.

The case law section contains eleven other court decisions including several relating to sports arbitration cases.

Finally, we have included our usual reports on the activities of ASA.

As always, if you have critical remarks or suggestions as to how the Bulletin could be further improved, or wish to provide materials for possible publication, please do not hesitate to contact us.

For the Editorial Board

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#### **REMINDER: CALL FOR MATERIALS - TESTIMONY EVIDENCE**

The next piece on Arbitration Practice and Procedure which we hope to publish in 2010 will deal with testimony evidence. We would welcome unpublished decisions (recorded in procedural orders, letters or awards) on the topic. (For more information, see ASA Bull. 1/2010, p. 6 or contact Domitille Baizeau at [dbaizeau@lalive.ch](mailto:dbaizeau@lalive.ch)).