

The Bulletin in Brief

This last issue of 2010 contains three articles and several notes reflecting recent developments in international commercial arbitration in Switzerland and abroad.

In the first article, *Pierre Lalive* pleads in favour of a **stricter control of arbitral awards rendered in Switzerland by the Federal Supreme Court**. He asks the question of whether the “ultra-restrictive” approach of the Supreme Court truly reflects the original intention of the legislature, and whether, in view of the increasing number of challenges, it has now become a disincentive to the selection of a Swiss seat of the arbitration by foreign parties and encourages, or at least fails to discourage, poorly or insufficiently reasoned awards.

Georg von Segesser then usefully summarizes the key changes contained in the new **IBA Rules on the Taking of Evidence in International Arbitration** adopted in May 2010, which, he argues, continue to reflect a fair balance between the civil law and the common law traditions.

Nathalie Voser presents the main principles and goals of the important **new rules on domestic arbitration in Switzerland**, as contained in Part 3 of the new Code on Civil Procedure, due to come into force on 1 January 2011, which unifies the civil procedure before State Courts throughout Switzerland. She highlights the main changes that have been introduced, and includes a comparison to the provisions contained in Chapter 12 of the Swiss Private International Law Act which governs international arbitration.

Three authors who were heavily involved in the UNCITRAL Working Group II focus on topics regarding the **revision of the UNCITRAL Arbitration Rules**. *James E. Castello* elaborates on a number of revisions that were hotly debated but ultimately not adopted in the new rules; *Stephen L. Drymer* deals with the new rules and roles for designating and appointing authorities; and *Georgios Petrochilos* with interim measures under the revised UNCITRAL Arbitration Rules.

In the News & Notes section you will find a summary of the latest ICC Statistical Report, which shows in particular that **Switzerland remains the most popular venue for ICC arbitration**.

As usual, abstracts of the case law published are set out in the Introduction to the **Case Law** Section (p. 767), including the following decisions from the Swiss Federal Supreme Court – most of which rejecting applications to set aside the arbitral award:

- A decision of 6 January 2010 rejecting an application to set aside an award based on the **alleged lack of impartiality of arbitrator (Art. 190(2)(a) PIL Act) and the violation of due process**, based on a procedural defect that had in fact been repaired by the Tribunal;
- A decision of 3 May 2010 **setting aside a TAS/CAS award** arising out of a doping case, for **lack of jurisdiction** of the arbitral tribunal;
- A decision of 3 August 2010 rejecting an application to set aside based on an allegation that the **parties had been taken by surprise** (prohibited by Art. 190(2)(d) PILA), when the arbitrator had relied on Article 18 CO to declare a particular contract simulated and thus void; and elaborating on the **distinction between partial and preliminary award** (“*sentence partielle – préjudicielle*”); .
- Two decisions of 28 June 2010, a domestic case, and of 29 June 2010, in which Court held *inter alia* that the **ECHR is not applicable** to arbitration proceedings, and **competition law does not fall within public policy**; and finally
- A decision of March 2010 rejecting an application to set aside the arbitral award based on an alleged violation of **public policy (Article 190(2)(e) PIL Act)**, while reaffirming the standing case law that amongst the principles protected by public policy are the **binding nature of contracts (principle *pacta sunt servanda*)** and the **respect for the rules of good faith**

We have included in our usual reports on the activities of ASA, the **Minutes of the General Assembly** of 24 September 2010. As in the past, this issue contains the yearly **consolidated index of articles, notes & decisions published in the Bulletin in 2010**, as well as an **alphabetical index for 2010**.

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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