

## The Bulletin in Brief

This first issue of 2011 contains three articles and several notes reflecting recent developments in international commercial arbitration in Switzerland and abroad.

The first article by *Matthias Leemann* deals with the **challenge of international arbitration awards in Switzerland on the ground of a lack of independence and impartiality of an arbitrator**, a ground often invoked but rarely successful. The author, who is a clerk at the Swiss Federal Supreme Court, highlights the many pitfalls to bear in mind, from the outset of the proceedings and the need for swift and thorough investigations by the party itself.

In the last issue of the ASA Bulletin we included a paper by P.Y. Tschanz in support of the pending parliamentary motion to amend Art. 7 PILS. In contrast, *Bernhard Berger* expresses reservations on the initiative pending before the Swiss Parliament aimed at amending **Article 7 of the PILS** in the light of a recent case decided by the Swiss Federal Supreme Court (4A\_279/2010). He **questions whether** importing the “negative effect” of competence-competence into Swiss law **would boost and further promote Switzerland as a major place for international arbitration** and suggest instead that Switzerland should help develop uniform transnational standards in relation to potential conflicts between arbitral and state court jurisdiction.

Finally, *Stacey I. Strong*, deals with the **collective arbitration under the DIS Supplementary Rules** for Corporate Law Disputes, which she compares with class arbitration in the U.S. as conducted under the American Arbitration Association's Supplementary Rules for Class Arbitration.

As usual, abstracts of the case law published are set out in the Introduction to the **Case Law** Section (p. 73), and include in this issue:

- Several decisions on applications to set aside and to review **TAS/CAS awards**, in particular in doping cases, including a decision in which the Swiss Supreme Court took the opportunity to address a number of issues regarding the challenge and removal of arbitrators:
- A recent (10 November 2010) decision in which the Supreme Court found that the decision ordering the parties to pay the arbitral tribunal's fees could not be characterized as an arbitral award, despite its title, and that **arbitrators have no power to order the parties to pay them the fees or expenses in a binding manner**

**through an arbitral award;** the decision is commented by *Bernhard Lötscher* and *Axel Buhr*;

- Three decisions of the French courts (Cour de Cassation and Cour d’appel de Paris) in which the **award was annulled following the challenge of the arbitrators on the basis of multiple appointments;** the Cour d’appel of Paris decision of 9 September 2010 (*Consorts d’Allaire c/. SAS SGS Holding France*) reaffirms the duty of disclosure of the arbitrator and for the first time annuls an award in a case of non-disclosed links between an arbitrator and counsel for one of the parties, and not the party itself; the decision is accompanied by a note from *Philippe Pinsolle*.

In the News & Notes section you will find a note on changes in **arbitration law and perceptions in Spain** by *Clifford J. Hendel*, a note on the future of the **BITs of European Member States after the Lisbon Treaty** by *Jan Kleinheisterkamp*, and finally a note on the New **Cuban Arbitration Act** in so far as it deals with interim measures of protection by *Johannes San Miguel Giralt*.

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.

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