

The Bulletin in Brief

As usual, the Bulletin first contains three articles on recent development in arbitration, with a slight focus, in this issue, on public law.

Eleanor McGregor first analyses the **use of arbitration in public law contracts in Switzerland**, and the uncertainties regarding the means of judicial review available in such cases, in view of the limited case law available and the lack of clarity of the relevant legislation including the new Swiss Code of Civil Procedure that came into force in January 2011.

In a second article, *Ahmed Ouerfelli* sets out the **recent developments of arbitration law and practice in Tunisia**, in view of certain key decisions of the Tunis Court of Appeal rendered between 2009 and 2011.

The last article by *Laura Halonen* contains a detailed commentary of the UNCITRAL award *Romak SA v Uzbekistan* based on the Switzerland / Uzbekistan BIT, and in particular the **gap in the notion of ‘investment’ between ICSID and UNCITRAL arbitration**.

A short summary of the case law is set out in the Introduction to the **Case Law** Section (p. 327). Sixteen cases are reported in this issue, including:

- Several **domestic arbitration** and **statutory arbitration** decisions, including an award deciding on the arbitrability of public law contracts (**electricity supply**) and a Supreme Court decision on the extent to which a statutory arbitration clause (contained in a **company’s bylaws**) may bind all creditors of an insolvent company seeking to sue the directors;
- Three decisions involving **multi-tier arbitration clauses** and agreements to rely on a decision by an “expert” prior to or instead of arbitration;
- The dismissal of two applications to set aside a **CAS/TAS award**, including one on the basis that a football federation **lacks legitimate interest to challenge an award** deciding on a dispute between a player and its former team, even if the Federation was allowed by the arbitrators to participate in the arbitration; and
- A Supreme Court decision upholding an award in which the arbitrators had resorted to the **CISG** and the **UNIDROIT Principles of International Commercial Contracts** in order to decide whether a “**material breach**” had been committed by a party to an international contract, where the contract was governed

by Swiss law and such terms are not used in Swiss Contract law; the decision is critically analysed by *Jan Kleinheisterkamp*.

In the News & Notes section you will find a note by *Pascal Hollander* and *Maarten Draye* on a recent amendment to the **Belgium** Bar rules **allowing attorneys to have prior contact with witnesses**, and a *plaidoyer* **against ethical guidelines for lawyers in arbitral proceedings** by *Beat Von Rechenberg*.

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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