

## The Bulletin in Brief

This issue of the Bulletin contains four articles addressing both practical and legal topical issues in international arbitration.

*Thomas Rohner* and *Michael Lazopoulos* analyze the **claimant's remedies when the respondent refuses to pay its share of the advance on costs**. They illustrate the issue by reference to arbitral awards and advocate that the arbitral tribunal's decision on the reimbursement for such costs should be based on the respondent's breach of its contractual obligations and rendered in the form of a partial award.

*Sébastien Besson* then pursues the debate on the **pending parliamentary motion to amend Article 7 of the PIL Act**, after P.Y. Tschanz in support of the proposed amendment and B. Berger expressing reservations on the initiative.<sup>1</sup> S. Besson also argues against the proposal, highlighting certain issues which would arise out of the application of such a provision, and concluding that it would support arbitration abroad rather than in Switzerland. He advocates a postponement of any amendment until the current *travaux* on the European Regulation No 44/2001 are completed as well as a broader reflection on a limited revision of the PIL Act.

In the third article, *Luca Beffa* argues in the light of recent case law that the Federal Supreme Court is adopting too relaxed an **approach to the concepts of independence and impartiality of arbitrators, in particular in sports arbitrations**, which may damage the reputation of Switzerland as a place of arbitration. He also seeks to propose possible remedies that could be implemented in order to ensure a more effective control of the independence and impartiality of arbitrators, not only by the Supreme Court, but also by arbitral institutions.

Finally, *Edouard Bertrand*, addresses the issues that may arise when using **third party funders (TPF) in arbitration**, a practice that is clearly on the rise, including the risk of TPF being used as a channel for money laundering, of TPF turning arbitration into a pure financial product, and of TPF placing undue pressure on the arbitrators. He concludes by advocating a collective reflection on TPF in arbitration, led by arbitral institutions, with the view to possibly regulate their use.

A summary of the case law published in this issue is set out in the Introduction to the **Case Law** Section (p. 616). Two awards and ten cases are reported in this issue, including:

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<sup>1</sup> ASA Bull. 3/2010, p. 478, and ASA Bull 1/2011, p. 33, respectively.

- A recent decision of the Supreme Court analysing **whether contractual provisions contemplating certain procedural steps before initiating arbitration proceedings** impacted on the jurisdiction of the arbitral tribunal (accompanied by a note from *François Perret*);
- Several decisions on the arbitral tribunal's **minimal duty to examine and to deal with all the relevant issues and examine the parties' pleadings** as well as **the consequence of contradictory pleadings**;
- Several decisions on **CAS/TAS awards** including in relation to the Valverde saga;
- A decision in which the Supreme Court confirmed that the tribunal seized with the principal claim can address **a set off claim** irrespective of whether such defence is **outside the scope of the arbitration agreement or subject to another forum** selection clause; and
- A decision confirming that the **renunciation to arbitration** which may result from a party's **failure to pay the advance of arbitration costs in domestic arbitration** does not apply if both parties fail to pay the costs.

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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