

## The Bulletin in Brief

This first issue of the Bulletin for 2012 contains **two articles** and nearly a dozen arbitration-related court decisions.

The first article by *José Miguel Júdice* summarizes the **new Portuguese arbitration legislation** largely based on the UNCITRAL Model Law, and is accompanied by the most relevant provisions of the new law reproduced in this issue.

*Matti S. Kurkela* then addresses the thorny issue of **assessing future lost profits** as damages in international disputes, suggesting the use of partial or “milestone” awards and the stay of arbitral proceedings in order to eliminate or reduce the risk of gross failures in valuation, by shifting the assessment to a point in time when such future lost profits become past lost profits.

A summary of the decisions published in this issue is set out in the Introduction to the **Case Law** Section (p. 64), including:

- three court decisions on the **recognition and enforcement of foreign arbitral award**: two 2010 Swiss Supreme Court decisions upholding enforcement, and one 2011 French Cour de Cassation decision refusing to enforce a Swiss arbitral award on the ground of an alleged absence of an arbitration agreement, in circumstances where the award was not challenged in that ground before the Swiss Supreme Court (Art. 190(2)(a) PIL Act); the decision is commented by *Eleanor Cashin Ritaine*;
- A Supreme Court decision **partially setting aside a TAS/CAS award** which included the allocation of **costs** but was rendered before the parties had submitted their pleadings on this point;
- A Supreme Court decision which, in the context of a domestic award, recalls and refines the criteria for **distinguishing between expert determination and arbitration**;
- Two Supreme Court decisions confirming the court’s liberal and flexible approach to the conclusion of an **arbitration agreement by reference to another document** and the **interpretation and correction of pathological arbitration clauses**, including by filling in missing elements once the parties’ clear intention to resort to arbitration is established; the decision is commented by *Luca Beffa*;
- Two Supreme Court decisions addressing the limits to the **parties’ right to a tribunal-appointed expert and to call witnesses**; and

- The decision of the Court of Appeal of Reims in the long running dispute between **Avax and Tecnimont** regarding an arbitral award rendered in 2007 and **an arbitrator's alleged conflict of interest** based on an on-going client relationship between the law firm of one of the arbitrators, a party and the group to which the latter belonged; the decision is commented by *Tom Philippe Heintz* and *Gustavo Vieira da Costa Cerqueira*.

Also included in this issue is the report on the **ASA Lausanne conference** of 27 January 2012 “Sports Arbitration: a Coach for other Players?”; *Henry Peter's laudatio* of the laureate of the **ASA Advocacy Prize**, *Philippe Pinsolle* (see also the President's Message) and the ASA local groups' activities and contact details.

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.

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