

The Bulletin in Brief

This first issue of the Bulletin for 2013 contains only two articles but more than fifteen arbitration-related court decisions.

The first article by *Simon Gabriel* deals with **investment planning via Switzerland** in response to what the author considers as a growing interest of foreign investors for planning foreign investments via stable countries outside the EU, given, in particular, the abolishment of intra-EU BITs and the modification of extra-EU BITs and Switzerland's solid network of BITs with relevant EU- and third countries. The paper emphasises the minimal nationality requirements an investor must fulfil in order to structure foreign investment via Switzerland

In the second article, *Simone Stebler*, **analyses the problem of conflicting arbitration and forum selection clauses** in the same contract, which confronts state courts and arbitral tribunals with distinct questions as to the validity and scope of both clauses. Her review of arbitral awards and court decisions rendered in various jurisdictions show that courts and arbitral tribunals have adopted differing approaches in tackling these issues.

A summary of the decisions and orders, as well as one award, published in this issue is set out in the Introduction to the **Case Law** Section (p. 45), including:

- An ICC award and a German Supreme Court decision examining the **scope and validity of an arbitration agreement** in a contract that also provided (in another clause) for the **jurisdiction of the state Courts**;
- A Supreme Court decision on the delicate issue of **friendship between a judge and a party**, of relevance to the relationship between an arbitrator and a party or counsel;
- Several decisions in which the Supreme Court granted suspensive effect to a request to set aside an arbitral award;
- A Supreme Court decision confirming that international arbitral tribunals in Switzerland are not obliged to **stay the arbitration in the event of criminal proceedings** and that the principle “*le pénal tient le civil en l'état*” does not apply;
- A Supreme Court decision holding that an arbitral tribunal which disregarded the temporal **validity of the arbitration agreement or a mandatory pre-arbitral conciliation or mediation requirement** lacked jurisdiction;

- Three decisions of the Supreme Court in which the argument of **violation of right to be heard** was rejected: one in which the arbitral tribunal had **failed to hear witnesses** on certain arguments and documents which the seller had introduced in the arbitration after the hearing; one in which the arbitral tribunal had allegedly failed to consider pertinent arguments the owner had raised, and had **refused to arrange for a site visit**; one in which the TAS had **failed to appoint an expert**;
- An enforcement decision confirming that a **full translation of the award from the English language into a Swiss national language** is not required; and
- a Supreme Court decision addressing the important issue of **multiple appointments of the same arbitrator by a party** in the context of a CAS/TAS arbitration.

Also included in this issue are news about ASA, in particular a report on the ASA Annual Conference held in Zurich on 1 February 2013 on how arbitral tribunals operate and reach their decisions and on the ASA Arbitration Practice Seminar organised jointly with DIS in Badenweiler on 18-20 January 2013.

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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