The Bulletin in Brief

Readers will find a number of contributions on highly relevant topics in this fourth and final issue of this year's Bulletin:

On the occasion of a decision of the Swiss Supreme Court on a patent licence agreement (BGE 140 III 134), Professor de Werra explores the pitfalls to avoid when drafting arbitration agreements for intellectual property disputes and highlights the need to include **post-termination disputes** within their scope (Jacques de WERRA, *The Expanding Significance of Arbitration for Patent Licensing Disputes: from Post-Termination Disputes to Pre-Licensing FRAND Disputes*).

Professor Haas undertakes a critical analysis of **forced arbitration** and the powers of courts to review arbitration agreements entered into by athletes. He focuses on a German judgment regarding German speed skater Claudia Pechstein in which the Court ruled that the arbitration agreement between Ms Pechstein and the International Skating Union was invalid (Ulrich HAAS, *Zwangsschiedsgerichtsbarkeit im Sport und EMRK*).

Two Swiss authors visit a recurrent issue in arbitration proceedings: the **insolvency of a party** (Saverio LEMBO and Aurélie CONRAD HARI, *International Arbitration in Switzerland and Foreign Bankruptcy: Where Do We Stand?*).

The **LCIA Arbitration Rules** were revised earlier this year. In her paper '*Key features of the LCIA Arbitration Rules?'*, Laurence PONTY identifies the main changes.

Like other issues of the Bulletin, the present issue contains an Introduction to Case Law (p. 774) summarising many decisions of Switzerland's Supreme Court and a number of landmark decisions of foreign courts, including:

- A Swiss Supreme Court decision where an athlete contended in vain that an arbitration agreement he had signed became void as a result of the arbitral tribunal's **refusal to grant legal aid**. He sought to set aside the final award for lack of jurisdiction and on the ground that his right to equal treatment had been violated.
- A judgment rejecting a jurisdictional challenge against an award on the ground that **neither the arbitrator nor his administrative secretary were conversant in the Hungarian language** which, according to the plaintiff, had prevented the arbitrator from understanding the applicable law.

- Two judgments dated 7 July 2014 and 10 October 2014 from the Swiss Federal Supreme Court and English Technology and Construction Court (Decision 4A_124/2014 of 7 July 2014 and High Court of Justice, Queen's Bench Division, [2014] EWHC 3193 (TCC), Decision of 10 October 2014, Peterborough City Council v. Enterprise Managed Services Ltd, Edwards-Stuart J.) which addressed the **enforceability of a precondition for arbitration in a multi-tier dispute resolution provision**, namely the requirement to submit a dispute to a dispute adjudication board ("**DAB**") under **Clause 20 of the FIDIC** Conditions of Contract (Matthias SCHERER, Sam MOSS, *Swiss and English courts analyse enforceability of multi-tier dispute resolution provision providing for DAB proceedings (FIDIC, clause 20)*).
- A judgment of the Privy Council, the court of final appeal for the British Virgin Islands as well as other overseas territories of the United Kingdom, rejecting an application to refuse recognition and **enforcement of a Swiss arbitral award** under the New York Convention (Marie BERARD's and Katharina LEWIS' case note is followed by an extract from the judgment).
- A judgment of the English Commercial Court, *BDMS Limited v Rafael Advanced Defence Systems* [2014] EWHC 451 (Comm) (Hamblen J) – commented on by Chris CAULFIELD, in which Justice Hamblen concluded that the **Respondent's refusal to pay an advance on costs** in an ICC arbitration was a breach of the arbitration agreement, but not a repudiatory breach granting the Claimant a right to terminate it.

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

MATTHIAS SCHERER