

## The Bulletin in Brief

In this issue you will find:

ASA President Elliott GEISINGER's Message to the Readers, in which he addresses the misconception surrounding the ICC's recent note setting out new policies on the financial consequences for arbitral tribunals that delay without justification the submission of draft awards and the practical questions arising from this note: *Quousque tandem, Arbitrator, abutere patientia nostra?*

Aren GOLDSMITH analyses the potential use of international arbitration in connection with follow-on damages claims based on the breach of EU or Member State competition law rules in his article *Arbitration and EU Antitrust Follow-on Damages Actions*.

Patrick DUMBERRY examines the role of custom in the context of the proliferation of bilateral treaties on investment protection ('BITs') (*A Few Observations on the Remaining Fundamental Importance of Customary Rules in the Age of Treatification of International Investment Law*).

Andrea MEIER and Anna Lea SETZ discuss third party beneficiary contracts, and in particular who has the right to invoke the arbitration clause and who is under an obligation to do so in their article *Arbitration Clauses in Third Party Beneficiary Contracts – Who May and Who Must Arbitrate?*

Reto MARGHITOLA tackles the controversial interpretation of the IBA Rules on the Taking of Evidence in International Arbitration and proposes document production strategies and model-clauses in his article entitled *Document Production: New Findings on an Old Issue*.

Luiz Gustavo MEIRA MOSER addresses how parties approach choice of law decisions in cross-border transactions by presenting the results of a survey on the choice of law in international sales contracts (*Arbitration and Choice of Law in Cross-Border Transactions: A Potential Interplay?*)

Johannes LANDBRECHT introduces the Singapore International Commercial Court (SICC) and its potential benefits for users and legal practitioners to our readers in his article *The Singapore International Commercial Court (SICC) – an Alternative to International Arbitration?*

This Bulletin's selection of court decisions concerns highly relevant topics such as (for abstracts in English see the Introduction to the Case Law Section, p. 126):

- The requirement for parties to raise **proper objections** to any perceived **partiality** of an arbitrator immediately (Swiss Federal Supreme Court, 4A\_54/2015 of 17 August 2015).

- A tribunal’s **refusal to reconvene a hearing** after having ordered a party’s lawyer to leave the hearing because he was unable to produce a power of attorney (Swiss Federal Supreme Court, 4A\_70/2015 of 29 April 2015).
- The **standing to sue of parties to a simulated contract** (Swiss Federal Supreme Court, 4A\_143/2015 of 14 July 2015).
- **Infra and ultra petita**: The tribunal’s powers to award a party its claims and the ground for challenging the tribunal’s failure to deal with a party’s subsidiary relief (Swiss Federal Supreme Court, 4A\_218/2015 of 28 October 2015).
- **Right to be heard** if the tribunal does not consider an **expert opinion** when the expert has not been presented at the hearing for cross examination and the possibility to request **security for costs of the Supreme Court proceedings** (Swiss Federal Supreme Court, 4A\_572/2015 of 6 January 2016).
- Whether the reference in a contract to a set of rules and substantive laws is tantamount to an **opting out** of the provisions governing international arbitration (**Article 176 PIL Act**) in favor of domestic arbitration law (Swiss Federal Supreme Court, 4A\_568/2015 of 10 December 2015).
- Right to be heard in case of ***ex parte* meetings between an arbitrator and a party’s expert** and whether a **final award which disregards prior preliminary awards** offends the *res judicata* principle (Swiss Federal Supreme Court, 4A\_599/2014 of 1 April 2015).
- The tribunal’s **dismissal of evidence which was not introduced in accordance with the procedural timetable** and its failure to consider relevant arguments (Swiss Federal Supreme Court, 4A\_246/2014 of 15 July 2015).
- Whether a tribunal’s **refusal to order the production of documents** violates a party’s right to be heard (Swiss Federal Supreme Court, 4A\_50/2013 of 2 October 2013).
- Annulment of the infamous award rendered in favor of **Bernard Tapie** (France: Court of Appeal, Paris, Decision of 17 February 2015, commented by Marc HENRY, *Arbitrage Tapie: Les affres d’un prejudice moral immoral*).

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