The Bulletin in Brief

In his message "The Wizard of Oz (or 'Good Faith and Swiss Law')", ASA President Elliott GEISINGER provides some pointed guidance on a famous yet frequently misunderstood (or misquoted) concept of Swiss law. Careful comparative analysis instead of perpetuating clichés should be the order of the day.

Articles

The traditional investor-State dispute settlement (ISDS) system is the target of continued criticism, whereby new structures are discussed alongside proposals to improve the existing system. Correspondingly, in his contribution *The European Union's Investment Court System – A Critical Analysis*, Piero BERNARDINI first examines the key elements of the European Union's new proposal of an International Court System (ICS) and then also discusses ways to improve the existing traditional ISDS system.

It is a commonplace that commercial arbitration requires consent. Rarely discussed, however, is the determination of the law governing the analysis of consent. Johannes LANDBRECHT and Andreas WEHOWSKY (*Determining the Law Applicable to the Personal Scope of Arbitration Agreements and its "Extension"*) focus on this conflict of laws analysis. Following comparative remarks, the authors assess in particular Swiss law.

David CUENDET and Michael DAPHINOFF (*Vers une renonciation tacite au recours contre une sentence arbitrale ? Résumé et commentaire de l'ATF 143 III 55*) critically assess a French-language decision of the Swiss Federal Supreme Court of 18 January 2017, dealing with a waiver of appeal contained in an arbitration agreement. While agreeing with the result in principle, the authors regret that the Swiss Federal Supreme Court took a shortcut in its reasoning.

An evergreen aspect of arbitration law, although far from settled, is the effect of Multi-Tier Dispute Resolution ("MDR") clauses and the consequences of non-compliance with such clauses. Christian OETIKER and Claudia WALZ analyse the issue of *Non-Compliance with Multi-Tier Dispute Resolution Clauses in Switzerland*, in particular in view of the Swiss Federal Supreme Court's case law.

James DING and Harald SIPPEL present *The 2017 KLRCA Arbitration Rules*. Given Malaysia's recent economic growth and strategic location, the arbitration rules of the most important arbitral institution in Malaysia, the Kuala Lumpur Regional Centre for Arbitration ("KLRCA"), are of practical importance also for users and practitioners beyond the region.

Hatem ALABD (*Investisseurs étrangers en Égypte : Promotion et Protection, à la lumière de la loi du 31 mai 2017*) reports on developments in Egypt, a country that is traditionally important for international arbitration, focussing on recent reforms aimed at enhancing investors' confidence.

Concluding the article section with a particularly hot topic, Caroline DOS SANTOS (*Third-party funding in international commercial arbitration: a wolf in sheep's clothing?*) assesses the benefits as well as risks and downsides of third-party funding. She also summarizes different views on how to act on third-party funding issues in various leading arbitration jurisdictions.

Decisions of the Swiss Federal Supreme Court

Decision 5A_877/2014 of 5 October 2015: (1) Dispute resolution bodies established under collective employment agreements are proper arbitral tribunals that may render arbitral awards. (2) The award may not be challenged merely on the basis of a change in the number of arbitrators.

Decision 4A_596/2015 of 9 December 2015: The request to set aside an award was out of time for lack of an electronic signature.

Decision 4A_500/2015 of 18 January 2017: The contract was found to be invalid (forged). However, both parties ultimately accepted the validity of the arbitration agreement. The waiver of the right to challenge awards contained in this arbitration agreement (Art. 192 PIL Act) was therefore, also valid.

Decision 5A_978/2015 of 17 February 2016: As per Swiss statutory law, no advance waiver of challenges is possible in domestic arbitration.

Decision 4A_53/2017 of 17 October 2017: Awards that are tainted by fraud may be revised, even if the time limit for an ordinary annulment has expired, although it is disputed whether a waiver agreement (Art. 192 PIL Act) also covers requests for revision.

Decision 4A_600/2016 of 29 June 2017: (1) Although an agreement to opt out of chapter 12 PIL Act (applicable to international Swiss arbitrations) may not be formally valid, it may be bad faith (*venire contra factum proprium*) to object to the application of the Civil Procedure Code. (2) On the potential relevance of CAS awards as case law.

MATTHIAS SCHERER