

## The Bulletin in Brief

In his message *Let's Get Rid of Arbitration!*, ASA President Elliott GEISINGER reports a fictitious conversation between Sir Reginald Muddle, QC and Maître Paul-Philibert Confus, Avocat à la Cour, with a provocative conclusion.

### Articles

Felix DASSER and Piotr WÓJTOWICZ present the long-awaited update of data on the main features of annulment proceedings before the Swiss Federal Supreme Court (Felix DASSER, Piotr WÓJTOWICZ, *Challenges of Swiss Arbitral Awards. Updated Statistical Data as of 2017*).

Clàudia BARÓ HUELMO analyses State successions with regard to bilateral or multilateral investment treaties, as illustrated by the award in *World Wide Minerals v. Republic of Kazakhstan* (Clàudia BARÓ HUELMO, *Is Kazakhstan a State successor to the USSR? A perspective from investment treaty arbitration*).

Once in force, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“BEPS Convention”) will allow for arbitration proceedings. Patrick SCHMID explains the relevant framework (Patrick SCHMID, *Tax Arbitration under the BEPS Convention. An Overview and Potential Pitfalls from a Swiss Perspective*).

Fleur MALET-DERAEDT presents the French legislative changes on State immunities from enforcement introduced by the *Loi Sapin II* (Fleur MALET-DERAEDT, *The New French Legislation on State Immunities from Enforcement*).

Duarte G. HENRIQUES presents the Prague Rules, a new set of guidelines for use of counsel and arbitrators for the conduct of arbitration proceedings (Duarte G. HENRIQUES, *The Prague Rules: Competitor, Alternative or Addition to the IBA Rules on the Taking of Evidence in International Arbitration?*).

Dimitra A. TSAKIRI elaborates on how the New York Convention is used not only for the enforcement of awards but also of arbitration agreements (Dimitra A. TSAKIRI, *Application of the New York Convention to the enforcement of Arbitration Agreements*).

Angela CASEY summarizes a new landmark case of the Swiss Federal Supreme Court confirming that in domestic matters, employment law

disputes are generally not arbitrable (Angela CASEY, *Fehlende Schiedsfähigkeit zwingender arbeitsrechtlicher Ansprüche im Binnenverhältnis. Anmerkungen zu BGE 4A\_7/2018 vom 18. April 2018*).

Caroline DOS SANTOS abstracts Supreme Court decision 4A\_260/2017 which confirmed that the CAS is an independent arbitral tribunal, not dependent on FIFA (Caroline DOS SANTOS, *Swiss Federal Supreme Court Confirms Independence of CAS*).

## Decisions of the Swiss Federal Supreme Court

Decision 4A\_7/2018 of 18 April 2018: Disputes involving domestic employment law claims are not arbitrable.

Decision 4A\_260/2017 of 20 February 2018: Sport dispute / Third Party Ownership Agreements (“TPO”) sanctioned by FIFA / CAS is an independent arbitral tribunal (Confirmation of ruling in the Lazutina case) / No public policy violation.

Decision 4A\_236/2017 of 24 November 2017: Arbitrators’ procedural conduct not indicative of bias / No right to a reasoned decision from the ICC regarding the challenge of an arbitrator / No violation of equal treatment by arbitrators’ rejection of late evidence.

Decision 4A\_318/2017 of 28 August 2017: Legal arguments allegedly raised at the hearing and disregarded in the award / No proof of existence of argument (absence of hearing transcript) / No violation of right to be heard.

Decision 4A\_507/2017 of 15 February 2018: Duty to pay Supreme Court’s administrative fees despite withdrawal of annulment request.

Decision 4A\_396/2017 of 23 November 2017: No security for costs required from a State that is party to the Hague Convention.

Decision 4A\_344/2017 of 21 December 2017: Interpretation of arbitration clause in company bylaws / Clause not applicable to dispute among members under a separate agreement containing a forum selection clause.

Decision 4A\_407/2017 of 20 November 2017: Pathological arbitration agreement (impossibility to nominate an arbitrator meeting the qualification criteria) / Gap filling by *juge d’appui* / Pre-arbitral mediation requirement not enforced since defendant refused claimant’s proposal to appoint a mediator.

Decision 4A\_466/2017 of 8 November 2017: Termination order / Ruling on defendant’s legal fees.

Decision 4A\_510/2017 of 9 November 2017: Annulment request abusively filed in English to obtain an extension of time (art. 42 Law on the Federal Supreme Court).

Decision 4A\_444/2016 of 17 February 2017: 30-day time limit to file for annulment triggered by receipt of reasons, not by the earlier notification of the award's operative part.

Decision 4A\_716/2016 of 26 January 2017: Prohibition to take the parties by surprise by entirely unsuspected legal reasoning.

Decision 4A\_53/2016 of 13 July 2016: Request to set aside a decision labeled award issued by a public arbitral tribunal established by statute rather than by the parties / Not an arbitral award.

Decision 4A\_475/2016 of 28 March 2017: Waiver of right to challenge award in domestic arbitration is admissible, if made after the award is rendered.

Decision 4A\_206/2016 of 20 May 2016: Supreme Court establishes the plaintiff's domicile on its own motion / Plaintiff's residence when signing the arbitration agreement outside Switzerland / Not a domestic arbitration / No challenge for alleged arbitrariness of the arbitral award.

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