The Bulletin in Brief

In its message, the ASA Board raises concerns regarding the CJEU's decision in the Achmea matter. Achmea appears to outlaw investor state arbitration based on intra-EU BITs to the extent those arbitrations are seated, or resulting awards are enforced, in EU territory. The ASA Board anticipates that in the future sophisticated investors might make their investments into what they perceive as 'riskier' EU jurisdictions through entities situated in non-member states.

Articles

Stay applications are frequent in international arbitration. Luka GROSELJ analyses a number of unpublished arbitral decisions (now reported in the ASA Bulletin's case law section). He concludes that the most widely relied upon reason for a **stay application** is the existence of on-going parallel (court or arbitral) proceedings or criminal investigations. Pending enforcement of partial awards, payment of security for costs or clarification of the opposing party's representation or solvency have also been invoked (Luka GROSELJ, *Stay of arbitration proceedings – Some examples from arbitral practice*).

The new **OHADA Rules of Arbitration** grant arbitral tribunals the power to suspend the arbitral proceedings, if a party rightfully claims noncompliance with a mandatory pre-arbitral procedure, as may be imposed by a multi-tier dispute resolution clause. Michael W. BÜHLER and Anne-Sophie GIDOIN explore the novel provisions and compare them to diverging positions taken by the French and Swiss courts (Michael W. BÜHLER, Anne-Sophie GIDOIN, *L'« étape préalable » dans le nouveau droit de l'arbitrage et de la médiation OHADA*).

Indian courts have struggled with the issue of **multi-party arbitration**. Harshad PATHAK maps relevant case law by Indian courts over the past decade, including the Supreme Court of India's latest exposition on this issue in its judgment in Rishabh Enterprises. (Harshad PATHAK, *India's Tryst with Non-Signatories to an Arbitration Agreement in Composite Economic Transactions*).

Hui WANG explains why in **China "soft" rules** are not embraced as easily as in other jurisdictions and makes suggestions as to how the arbitration community could enhance their significance. (Hui WANG, *Multidimensional Thinking about the 'Soft Laws' Phenomena in International Commercial Arbitration: A Chinese Perspective*).

Arbitral Decisions

Extracts from 15 rulings by arbitral tribunals (ICC, Swiss Chambers, LCIA, ad hoc) upon applications for a stay of the arbitration.

Swiss Federal Supreme Court

4A_322/2015 of 27 June 2016: Annulment proceedings / Dissenting opinions do not form part of the arbitral award / Comments filed by the presiding arbitrator in his own name disregarded by Supreme Court / No surprise application of the law by arbitral tribunal (iura novit curia).

4A_250/2013 of 21 January 2014: Enforcement of an arbitral award rendered in Teheran (Oil delivery from Iran to Israel) / Iran sanctions not a bar to enforcement.

5A_862/2017 of 9 April 2018: Enforcement of an arbitral award rendered in England / Notification of arbitration to party's agent considered to be proper for the purpose of the New York Convention / US sanctions (Crimea) no bar to enforcement.

4A_50/2017 of 11 July 2017: Alleged acts of bribery, threat of regulatory sanctions and violation of compliance rules not demonstrated / Ultra petita (declaratory ruling not based on any prayer) / Award confirmed.

4A_448/2013 of 27 March 2014: Arbitral tribunal's reliance on evidence obtained illegally (video) not sanctioned by Supreme Court.

4A_314/2017 of 28 May 2018: Arbitration clause in sport federation's bylaws can be invoked by non-members / CAS had ratione personae jurisdiction.

4A_356/2017 of 3 January 2018: Belated expert report rejected by arbitral tribunal / No absolute right to a double exchange of submissions.

4A_136/2018 of 30 April 2018: Annulment request late / Decisions by an arbitral tribunal on its composition or jurisdiction must be challenged immediately.

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