

The Bulletin in Brief

In his message *Simplicity and Sophistication (Of Furniture, Nails, Screws and Glue)*, ASA President Elliott GEISINGER lauds the art of simplicity and questions the necessity of some of the proposed revisions of Chapter 12 of the Swiss Private International Law Act governing international arbitration in Switzerland.

Articles

In his article, *The Publication of Arbitral Awards as a Contribution to Legal Development – A Plea for more Transparency in International Commercial Arbitration*, Philip WIMALASENA submits that the legal development in many areas is hampered by the confidentiality of arbitral awards and calls for more transparency in commercial arbitration through the systematic publication of arbitral awards. WIMALASENA then analyses the structural prerequisites of a comprehensive publication practice and makes concrete recommendations for the anonymous publication of arbitral awards.

Against the backdrop of the increasingly growing number of intellectual property (IP) disputes, Thomas LEGLER (*Arbitration of Intellectual Property Disputes*) outlines the benefits of arbitration for IP disputes. LEGLER discusses recent developments in the field of IP disputes, such as the European Union's future Unitary Patent Court system, and provides an overview of the specific arbitration procedures available for such disputes before examining how blockchain technologies, in particular smart contracts, could lead to the emergence of practical applications in the IP field.

In his paper *Strong by Association: Arbitration's Policy Debates, Mandatory Rules, and PIL Scholarship*, Johannes LANDBRECHT, building on a recent publication by SAGI PEARI, submits that arbitration could benefit from private international law (PIL) thinking. LANDBRECHT explains that PEARI's approach to PIL is in line with arbitration because it also focuses on party autonomy and the parties' expectations. He then highlights five developments in general PIL thinking and demonstrates how they might be incorporated in arbitration, in particular when dealing with mandatory substantive rules.

Although Luxembourg has traditionally been influenced by the developments of French law and courts, Luxembourg courts have recently rejected the French courts' approach to the recognition and enforcement of annulled arbitral awards. Michael WIETZOREK (*Luxembourg's Rejection of*

the French Approach to the Recognition and Enforcement of Annulled Arbitral Awards) reports on and analyses the series of decisions rendered by the Luxembourg Court of Appeal in the internationally well-known *Pemex* and *Gold Reserve* cases.

Blockchain technology has been a hot topic in recent years and its use is becoming increasingly more prevalent. Yet, for many practitioners, it is still obscure what dispute resolution mechanisms are best suited to that technology. In their article *Smart Contracts and Dispute Resolution – A Chance to Raise Efficiency?*, Falco KREIS and Markus KAULARTZ first provide a welcome introduction on the basics of blockchain technology and smart contracts before shedding light on the dispute resolution mechanism suitable to that technology and exploring whether efficiency could be increased further through the automation of the dispute resolution process.

Whilst much has been said on the role and duties of tribunal secretaries, there is still little guidance on the remedies available to parties when a tribunal secretary exceeds his/her powers or lacks independence and impartiality. Taking inspiration from the epic series *Game of Thrones*, Eliane FISCHER and Flavio PETER (*The Consequences of a Tribunal Secretary's Breach of Duties – the Games of Thrones edition*) tackle this issue and provide an overview of the remedies available in cases where the tribunal secretary “swing[s] the sword” instead of the arbitral tribunal or otherwise breaches his/her duties.

Swiss Federal Supreme Court

4A_508/2017 of 29 January 2018: Ultra petita – Reduction of excessive penalties

4A_642/2017 of 12 November 2018: Set-off not ultra petita – Award partially annulled for being inconsistent with the arbitration record

4A_583/2017 of 1 May 2018: Jurisdiction over a retention right invoked by the defendant against the claimant's claim in the arbitration

4A_490/2017 of 2 February 2018: Jurisdiction *ratione temporis* – Prior disciplinary proceedings not a prerequisite for CAS jurisdiction

4A_394/2017 of 19 December 2018: No right to withdraw a claim without prejudice

4A_424/2018 of 29 January 2019: Request dismissed despite due process violation for lack of impact on the outcome

4A_556/2018 of 5 March 2019: Challenge admissible against termination order of vice president of CAS Appellate Chamber

4A_324/2018 of 17 July 2018: Court injunction – Parallel jurisdiction between court and arbitral tribunal

4A_60/2018 of 27 June 2018: Corporate dispute – Call option

4A_308/2018 of 23 November 2018: New document and allegations in closing submissions

4A_312/2017 of 27 November 2017: Public policy – Player's agent fee of ten times player's salary not excessive

4A_66/2019 of 15 March 2019: Annulment proceedings – Security for costs

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