

The Bulletin in Brief

In his message *Arbitration Profiling*, ASA President Elliott GEISINGER warns against the risks entailed in the profiling of arbitrators or counsel in international arbitration based on pre-determined general categories such as the legal background and explains why attempts to determine an individual's likely view or approach based on whether he or she is from a common law or a civil law system should be viewed with scepticism.

Articles

Milivoje MITROVIC examines mandatory pre-arbitral requirements in multi-tiered dispute resolution clauses ("MDR-clauses") and the different possible legal consequences in case of non-compliance, including in terms of the arbitral tribunal's jurisdiction and admissibility. MITROVIC focuses on the approach taken by Swiss courts to this issue and compares it to that of courts and arbitral tribunals in Germany and France (Milivoje MITROVIC *Dealing with the Consequences of Non-Compliance with Mandatory Pre-Arbitral Requirements in Multi-Tiered Dispute Resolution Clauses*).

Manuel ARROYO, the editor of *Arbitration in Switzerland – The Practitioner's Guide*, shares with the ASA Bulletin readers what led him to embark on the project of publishing an all-embracing treatise on international arbitration in Switzerland written by Swiss arbitration practitioners for all practitioners and the key conditions that had to be met for this project to succeed (Manuel ARROYO, *Giving birth to a 3'000-page treatise: How "Arbitration in Switzerland" came into being*).

Hamel ALSULAMY presents Saudia Arabia's first independent institutional arbitral centre, the Saudi Centre for Commercial Arbitration (SCCA), and discusses a recent Ministerial Resolution which has the effect of extending the powers of the SCCA to international investment disputes against state-controlled entities or agencies. ALSULAMY discusses this new mandate of the SCCA in the light of the particularities of the Saudi Arbitration Law of 2012, which prohibits state-controlled entities and agencies from resorting to arbitration without the authorisation of the Prime Minister (Hamel ALSULAMY, *The Saudi Center for Commercial Arbitration: The Catalyst Most Needed*).

Benedikt PIRKER addresses the arbitration clause contained in the draft institutional framework agreement between Switzerland and the European Union (EU). PIRKER analyses the extent of the arbitral tribunal's autonomous decision-making considering its obligation to refer questions of

interpretation of EU law to the Court of Justice of the EU (CJEU) as well as the compatibility of arbitration with the autonomy of EU law as understood by the CJEU (Benedikt PIRKER, *Das Schiedsgericht im Institutionellen Abkommen zwischen Eigenständigkeit und Autonomie des Unionsrechts*).

Gordon BLANKE discusses the role of the European Commission as *amicus curiae* in arbitration proceedings that involve EU competition law issues. BLANKE highlights the Commission's experience to date and endeavours to develop a structural framework within which the Commission could offer its assistance in future EU competition arbitrations (Gordon BLANKE, *Die Europäische Kommission als Amicus Curiae in Schiedsverfahren zum EU-Wettbewerbsrecht: Überlegungen zu einer strukturierten Zusammenarbeit*).

This year marks the 25th anniversary of the enactment of the Egyptian Arbitration Law no. 27/1994 modelled after the UNCITRAL Model Arbitration Law. In celebration of this special occasion, Ibrahim SHEHATA shares recent developments and trends in the field of arbitration in Egypt with a focus on the annulment of arbitral awards, the challenge of arbitrators in the context of institutional arbitration and recent decisions of the Cairo Court of Appeal (Ibrahim SHEHATA, *25 Years of Model Law Arbitration in Egypt*).

Swiss Federal Supreme Court

4A_462/2018 of 4 July 2019: Request to set aside Swiss Rules/SCAI award issued after annulment of a preceding award – Award annulled again – Arbitral tribunal failed to adhere to the Supreme Court's reasoning that led to the annulment of the first award

4A_663/2018 of 27 May 2019: Undisclosed conflicts no bar to award enforcement – IBA Guidelines

4A_62/2019 of 6 August 2019: Arbitrator impartiality – Relationship between counsel and arbitrators

4A_460/2018 of 13 June 2019: Contractual expert determination mechanism does not dispense a party from substantiating the elements to be submitted to the expert

4A_136/2018 of 30 April 2018: Arbitral Tribunal's procedural order (under the DIS Rules) rejecting a challenge of an arbitrator must be challenged immediately before the Supreme Court

4A_530/2013 of 2 May 2014: Findings in award not based on document mentioned by mistake therein – Requiring a party to prove a negative does not constitute a ground for challenge – The principle negativa

non sunt probanda is not absolute and falls within the scope of the Arbitral Tribunal's assessment of the evidence

4A_494/2018 of 25 June 2019: Adverse impact of corruption probe on public image of a party no ground for contract termination – No public policy or due process violation

4A_338/2018 of 28 November 2018: Request to set aside a domestic award (Swiss Rules) – Right to be heard – Iura novit curia – Cost allocation not open to challenge

4A_54/2019 of 11 April 2019: CAS termination order upheld – Failure to timely file appeal by courier results in termination

4A_40/2018 of 26 September 2018: 30-day time limit for challenge not triggered by courtesy email copy of ICC award.

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