The Bulletin in Brief

In his last message as ASA President *De la musique avant toute chose, et pour cela préfère l'impair*, Elliott GEISINGER exhorts us to prefer the "uneven" in arbitration, namely diversity. For GEISINGER, diversity should permeate arbitration at all levels and guide all arbitration stakeholders, be they legislators, judges, institutions, lawyers, arbitrators or parties.

Articles

The Swiss Federal Supreme Court has dealt on several occasions with investment treaty arbitrations. Matthias SCHERER and Angela CASEY have prepared a survey and summarize the most recent decisions (Matthias SCHERER, Angela CASEY, *Domestic Review of Investment Treaty Arbitrations: the Swiss Experience Revisited*).

David ROSENTHAL provides welcome practical guidance on how to comply with data protection requirements under the EU General DATA Protection Regulation (GDPR) in international arbitration. The author discusses five key challenges of the GDPR in an arbitration and proposes practical solutions to overcome them, such as the conclusion of a data protection agreement among the various stakeholders. A template data protection agreement is provided at the end of the article (David ROSENTHAL, *Complying with the General Data Protection Regulation (GDPR) in International Arbitration – Practical Guidance*).

Gustavo SCHEFFER DA SILVEIRA comments on the recent decision rendered by Brazilian courts in the Paranapanema case, in which the courts found that the arbitration agreement in a contract extended to two connected contracts, despite the exclusive forum selection clause they contained, on the basis that all three contracts formed a single economic transaction. The author provides a critical analysis of this decision and argues that it ignores the requirement of the parties' consent to arbitration (Gustavo SCHEFFER DA SILVEIRA, *Brazilian Special Appeal n°. 1.639.035-SP, 18 September 2018, Paranapanema S/A vs/ BTG Pactual S/A and Santander Brasil S/A*).

Johannes LANDBRECHT presents the Singapore Convention (2018) concerning mediated settlements, the Hague Choice of Court Convention (2005) and Hague Judgment Convention (2019) and considers the impact of these three treaties on the competitiveness of international commercial arbitration compared to mediation or litigation (Johannes LANDBRECHT, *Commercial Arbitration in the Era of the Singapore Convention and the Hague Court Conventions*).

Simon GABRIEL reports and comments on a recent decision of the Swiss Supreme Court relating to the extension of arbitration agreements to non signatories under the New York Convention (NYC). The central question is whether non signatories are entitled to rely on Article II of the NYC to resist jurisdiction of a state court (Simon GABRIEL, *Congruence of the NYC and Swiss lex arbitri regarding extension of arbitral jurisdiction to non-signatories. BGE 145 III 199 (BGer Nr. 4A_646/2018*).

Morten FRANK focuses on the interpretation of pathological arbitration clauses providing for arbitration "if any", "if required" or "to be settled". FRANK analyses whether the use of such wording has the effect of depriving parties of a contractually binding and mandatory arbitration agreement in the light of the case law rendered by English and U.S. courts on this issue (Morten FRANK, *Arbitration 'if any' or 'to be settled': A pathological yet curable agreement to arbitrate?*).

Lorenz RAESS examines how to challenge decisions rendered by Swiss state courts at the seat of the arbitration when called upon by parties or an arbitral tribunal to assist in the taking of evidence under Art. 184(2) of the Swiss Private International Law Act. (Lorenz RAESS, *Challenging Court Assistance in the Taking of Evidence in International Arbitration – the Swiss Perspective*).

Swiss Federal Supreme Court

145 III 199, 4A_646/2018 of 17 April 2019: Extension of arbitration agreement to non signatory – Non signatory entitled to rely on Article II NYC and to resist jurisdiction of state court (Commented by Simon GABRIEL, *Congruence of the NYC and Swiss lex arbitri regarding extension of arbitral jurisdiction to non-signatories. BGE 145 III 199 (BGer Nr. 4A_646/2018*).

143 III 462, 4A_98/2017 of 20 July 2017: Russia v. Yukos Capital: Request to set aside treaty award (ECT) – Jurisdiction of the arbitral tribunal – Request premature

141 III 495, 4A_34/2015 of 6 October 2015: Hungary v. EDF: Request to set aside treaty award (ECT) – Fair and equitable treatment ("FET") – Jurisdiction – Umbrella clause – Reservation

4A_616/2015 of 20 September 2016: Recofi v Vietnam: Request to set aside award rendered under the BIT between France and Vietnam – Lack of eligible investment

4A_157/2017 of 14 December 2017: Hungary v Hortel et al: Request to set aside award rendered under the BIT between the Netherlands and Poland – Public policy – Gambling laws – Fiscal prerogatives – FET

4A_396/2017 of 16 October 2018: Russian Federation v. Ukrnafta: Request to set aside award rendered under the BIT between Russia and Ukraine – Crimea – Scope of application of BIT

4A_65/2018 of 11 December 2018: India v. Deutsche Telekom: Request to set aside award rendered under the BIT between Germany and India – Jurisdiction – Investor – Investment – Pre-investment – Indirect investment

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