The Bulletin in Brief

In his message *The Times They Are A-Changin' (Fine – But How Much and For How Long, Exactly? And What Does It All Mean For Us?)* ASA President Felix DASSER addresses the changes brought about by the COVID-19 pandemic and calls on the arbitration community to cooperate to serve the needs of the users that are confronted with the fall-out of the economic lockdown.

Articles

Executive Director and General Counsel of the Swiss Chambers' Arbitration Institution (SCAI), Caroline MING, and Christian IOVENE present the advantages and benefits of the revised Swiss Rules of Mediation (2019) in light of the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention). (Caroline MING, Christian IOVENE, *Advantages and Benefits of the Revised Swiss Rules of Mediation 2019 – in Light and in Line with the Singapore Convention*).

In the last ASA Bulletin, we published the first part of Bernhard BERGER's survey on the case law of the Swiss Federal Supreme Court relating to investment treaty awards. In part II, the author provides practical guidance on the do's and don'ts, pitfalls and challenges of conducting arbitral proceedings before investment treaty tribunals seated in Switzerland. (Bernhard BERGER, *Die Schweiz als Schiedsort für Investitionsstreitigkeiten – Erkenntnisse aus der neueren Rechtsprechung des Bundesgerichts (Teil II)*).

In part I of their article, which was also published in the last ASA Bulletin, Hans-Ueli VOGT and Patrick SCHMIDT discussed a recent decision of the Swiss Supreme Court confirming the admissibility and binding effect of arbitration clauses contained in the articles of an association or corporation as well as the procedural and substantive requirements applicable to such clauses. In part II, the authors address the material and formal validity as well as the necessary and admissible content of such clauses (Hans-Ueli VOGT, Patrick SCHMIDT, *Schiedsklauseln in Vereinsstatuten. Bemerkungen zum Bundesgerichtsurteil 5A_1027/2018 vom 22. Juli 2019 und zur Revision des 12. Kapitels des IPRG und des Aktienrechts (Teil II)*).

How is a submission or pleading truly perceived by an arbitral tribunal? Is the argument understandable and presented in a compelling manner? A shadow arbitrator can assist counsel by addressing these

questions. Jörg RISSE discusses the role of a shadow arbitrator, his/her interaction with counsel and added value for the arbitration. (Jörg RISSE, *The Shadow Arbitrator: Mere Luxury or Real Need?*).

In his paper, Nobumichi TERAMURA submits that the alleged uncertainty arising from the power of arbitrators to decide ex aequo et bono is largely exaggerated and explores the theories (and values) of arbitration underpinning arbitrators' concept and sense of fairness. (Nobumichi TERAMURA, Ex Aequo et Bono *and Arbitration Theories: an Arbitrator's Subjective Perspective of Fairness as the Final 'Gap-Filler'*).

J. Ole JENSEN presents the new approach to the appointment of tribunal secretaries developed in his doctoral thesis. The proposal is for a formal appointment process for tribunal secretaries which culminates in 'Tribunal Secretary Terms of Appointment', detailing the tasks the secretary will carry out and classifying these types of tasks in Green, Orange and Red Lists, making up the 'Traffic Light Scale of Permissible Tribunal Secretary Tasks'. (J. Ole JENSEN*, Aligning Arbitrator Assistance with the Parties' Legitimate Expectations: Proposal of a 'Traffic Light Scale of Permissible Tribunal Secretary Tasks'*).

The activity of third-party funders remains to this day somewhat obscure and controversial as the specifics of the business are largely misunderstood. Oliver MARQUAIS and Alain GREC shed light on this topic and explain why Luxembourg, the second largest asset management centre worldwide, offers a highly suitable regulatory framework and attractive investment vehicles to third-party litigation funders. (Olivier MARQUAIS, Alain GREC, *Investment Management and Corporate Structuring Considerations for Third-Party Litigation Funders in Luxembourg*).

Soft law continues to divide the arbitration community: its supporters see it as an essential tool, its detractors as unwelcome interference in tribunals' and parties' procedural freedom. Drawing on the origins of soft law in public international law, where the concept originated, as well as more recent academic debate in that field, Daniel GREINEDER and Anastasia MEDVEDSKAYA examine its legitimacy and efficacy in international arbitration. (Daniel GREINEDER, Anastasia MEDVEDSKAYA, *Beyond High Hopes and Dark Fears: Towards a Deflationary View of Soft Law in International Arbitration*).

Swiss Federal Supreme Court

4A_342/2019 of 6 January 2020 [Request to set aside (ICC) award – Group of contracts only partially executed – Extension of arbitration clause in a signed contract to disputes concerning unsigned contracts]

4A_143/2018 of 4 April 2018 [Request to set aside award rendered by the conciliation commission for rental disputes (Art. 361(4) Federal Code of Civil Procedure)]

4A_386/2018 of 27 February 2019 [Power to sign arbitration agreement – Jurisdiction denied]

4A_597/2019 of 17 March 2020 [Revision – Expert report established after award was rendered]

4F_8/2018 of 14 March 2018 [Language of revision request before Swiss Supreme Court]

4A_386/2015 (142 III 521) of 7 September 2016 [Revision of arbitral award – Subsequent discovery of ground for challenge of arbitrator – Arbitrator's law firm part of a network of law firms, one of which advised an affiliate of one of the parties to the arbitration]

4A_539/2018 of 27 March 2019 [Set-off defence not mentioned in award – Right to be heard]

4F_7/2019 of 27 August 2019 [Request for revision of Supreme Court decision on request to set aside a domestic arbitral award]

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