

## The Bulletin in Brief

In his message *ASA – Swiss Home of Arbitration*, ASA President Felix DASSER addresses the future of Swiss arbitration and the initiatives recently launched by ASA to reinforce the attractivity of the Swiss arbitration market.

In his *In Memoriam* for Professor François Perret, who sadly left us earlier this year, Laurent LEVY retraces the work and life of this eminent academic and arbitrator.

### Articles

In June 2020 the Swiss Parliament enacted the ‘light touch’ revision of chapter 12 of the Private International Act on international arbitration. The revised provisions will enter into force on 1 January 2021. Philipp HABEGGER presents the amendments to the draft bill of the government debated in and in part adopted by the two chambers of the parliament and their committees on legal affairs. (Philipp HABEGGER, *Das Parlament verabschiedet die Revision von Kapitel 12 IPRG mit einem Feinschliff*).

Niels SCHIERSING, the author of a recently published monograph, *Earn-Out Disputes*, that comprehensively deals with the substantive and procedural issues relating to earn-out disputes, provides an introduction to this topic to the readers of the ASA Bulletin. (Niels SCHIERSING, *Earn-Out Disputes – An Introduction*).

In their article, Rajat SINHA and Vivek KRISHNANI examine the validity of unilateral dispute resolution clauses under the principle of equal treatment of the parties in arbitration proceedings enshrined in Article 18 of the UNCITRAL Model Law and propose a three-step test to assist courts, arbitral tribunals and counsel address this issue in practice. (Rajat SINHA, Vivek KRISHNANI, *Exposing Asymmetry to New Challenges: Status of UDCs under Art. 18 of the Model Law*).

In an effort to cope with the increase of art-related disputes, Art Basel adopted a few years ago a disciplinary procedure, the “Legal Compliance Process”, that applies to exhibitors suspected of illicit activities. Marion PARIS and Anne Laure BUNDLE explore whether Art Basel’s disciplinary procedure could be supplemented or even replaced by arbitration. (Marion PARIS, Anne Laure BUNDLE, *Arbitrage contemporain à Art Basel?*).

Regis BONNAN reviews national and institutional rules pertaining to the nationality of the arbitrator and shows that most of them effectively penalize the multi-national arbitrator, when multi-nationality could foster an

‘internationally-minded’ attitudinal neutrality towards foreign parties and cultures. The author also examines the policy considerations behind the importance attached to nationality in the selection of the arbitrators and their consequences on multi-nationality. (Regis BONNAN, *On the Nationality and Multi-Nationality of the Arbitrator: Old and New Issues of Formal Neutrality*).

Maël DESCHAMPS reports on the recent decision of an ICSID ad hoc committee to annul the award rendered in the *Eiser v. Kingdom of Spain* arbitration on the ground that one of the arbitrators lacked independence and impartiality for having failed to disclose his ties with the expert appointed by the claimants in the arbitration. This is the first time in ICSID history that an award is annulled for an arbitrator’s lack of independence and impartiality and raises the question of new disclosure obligations for arbitrators in investment arbitration. (Maël DESCHAMPS, *ICSID Award Annulled for Arbitrator’s Failure to Disclose Close Ties with Party Expert. Note on Eiser v. Kingdom of Spain*).

Laurent HIRSCH discusses a recent decision of the Swiss Federal Supreme Court rendered on 18 May 2020 (4A\_418/2019) concerning the interpretation of an arbitration clause. In that case, a lengthy clause expressly referring to arbitration was found to be invalid. It had been copied from a bilateral investment treaty and inserted in a commercial contract even though one of the parties had indicated during the contract negotiations that it did not accept international arbitration. (Laurent HIRSCH, *Odd Arbitration Clause, Reflecting Disagreement, Held to Be Inexistent. Note on the Judgment of the Swiss Federal Supreme Court of 18 May 2020*).

### **Swiss Cantonal Courts**

Zurich, Decision LB190029-O/U of 12 March 2020 [Arbitration agreement entered into by a limited company applies to the partners]

### **Swiss Federal Supreme Court Decisions**

4A\_418/2019 of 18 May 2020 [Arbitration agreement unenforceable absent meeting of minds (despite clear terms)]

4A\_70/2020 of 18 June 2020 [No damages for period not covered in prayers]

4A\_238/2018 of 12 September 2018 [Request to set aside (CAS) award – Late filing of hard copy of CAS appeal fatal]

4A\_636/2018 of 24 September 2019 [Arbitration agreement entered into by an entity controlled by the State (Libya) – No extension to State]

4A\_294/2017 of 25 September 2018 [Court and legal fees in case of withdrawal of a request to set aside an award]

4A\_512/2018 of 19 February 2019 [Court fees and defendant's legal fees in case of withdrawal of a request to set aside an award]

4A\_3/2019 of 11 April 2019 [Court and legal fees in case of withdrawal of a request to set aside an award]

4A\_266/2018 of 27 September 2018 [Court fees in case of withdrawal of a request to set aside an award]

4A\_49/2019 of 15 July 2019 [Arbitrator remuneration at hourly rate of CHF 500 and of Secretary at CHF 250 not excessive]

4A\_56/2017 of 11 January 2018 [Post M&A dispute – Earn-out clause]

4A\_426/2017 of 17 April 2018 [Interest worthy of protection (no)]

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