The Bulletin in Brief

In his message *The Revised Swiss* Lex Arbitri: *A Story of Two Dozen Jewels*, ASA President Felix DASSER commends the light touch revision of the Swiss *lex arbitri* which will enter into force on 1 January 2021 and confirms Switzerland's extremely pro-arbitration stance.

Articles

Hamish LAL, Brendan CASEY, Josephine KAIDING and Léa DEFRANCHI denounce the continued lack of coherence in the treatment of multi-tiered dispute resolution clauses in international arbitration and submit that institutional rules must be amended to grant arbitral tribunals the explicit power to decide on their jurisdiction and choose from the full array of options when dealing with the interpretation and enforceability of such clauses. (Hamish LAL, Brendan CASEY, Josephine KAIDING, Léa DEFRANCHI, *Multi-Tiered Dispute Resolution Clauses in International Arbitration – The Need for Coherence*).

In his paper, Reto Andrea TETTAMANTI examines the question of the transitional law provisions applicable to the revision of Chapter 12 of the Swiss Private International Law Act (PILA), Switzerland's *lex arbitri,* and shows how these provisions would apply to some of the most relevant changes arising from the revision. (Reto Andrea TETTAMANTI*, Intertemporales Schiedsrecht. Die für die Revision des 12. Kapitels IPRG relevanten Übergangsbestimmungen*).

Simon BACHMANN assesses the impact of third-party funding on requests for security for costs in international arbitration proceedings seated in Switzerland and examines whether the approach under the Swiss *lex arbitri* is in line with best international arbitration practice (Simon BACHMANN, *The Impact of Third-Party Funding on Security for Costs Requests in International Arbitration Proceedings in Switzerland. Why and how third-party funding should be considered under the Swiss lex arbitri*).

Giulio PALERMO and Panagiotis KYRIAKOU advocate in favor of the *ex æquo et bono* standard in international arbitration by outlining its advantages and exploring how the risks commonly associated with its application can be mitigated in light of the case law of the Basketball Arbitral Tribunal. (Giulio PALERMO, Panagiotis KYRIAKOU, *Leveraging the Standard of Ex Aequo et Bono to Increase Diversity, Flexibility and Efficiency: Insights from the Basketball Arbitral Tribunal*).

Andreea NICA discusses the recent decision of the Swiss Federal Supreme Court rendered on 25 March 2020 in *Clorox v. Venezuela* (4A_306/2019), which is of particular interest as it is the first time an award rendered in an investment treaty arbitration seated in Switzerland is set aside. The Supreme Court concluded that the arbitral tribunal had wrongly denied jurisdiction for lack of an "action of investing" as it found that, in the absence of adequate language prohibiting treaty shopping in the relevant treaty, the investor's nationality was the only threshold requirement. (Andreea NICA, *Case Note on the Decision of the Swiss Federal Tribunal in* Clorox v. Venezuela).

Samantha NATAF reports on two recent decisions rendered by the English and French Courts in relation to the enforcement of the same award. These decisions highlight the divergent approaches of the two jurisdictions regarding the law applicable to international arbitration agreements and the resulting risk of contradictory decisions. (Samantha NATAF, *Jurisdiction over Non-signatories, the Irreconcilable Approaches of French and English Courts. Case Note on: (i) English Court of Appeal Decision of 20 January 2020 and (ii) Paris Court of Appeal Decision of 23 June 2020*).

In his paper, Mahmoud Anis BETTAIEB discusses the important role played by the Tunisian judiciary in promoting arbitration as a private dispute resolution mode, be it in providing assistance for the constitution of the arbitral tribunal and its operation, or when interpreting and applying the Tunisian Code of Arbitration. (Mahmoud Anis BETTAIEB, *Le juge tunisien et la promotion de l'arbitrage*).

Nadia SMAHI analyzes due process under the Swiss Rules of International Arbitration and provides an overview of all decisions rendered by the Swiss Federal Supreme Court in relation to Swiss Rules arbitrations seated in Switzerland since June 2012. (Nadia SMAHI, *Due Process Under the Swiss Rules of International Arbitration*).

Swiss Federal Supreme Court Decisions

4A_404/2017 of 26 July 2018 [Admissibility of declaratory relief – Granting relief subject to conditions is not infra petita]

4A_424/2017 of 23 October 2017 [Infra petita – Obvious error in the award]

4A_98/2018 of 17 January 2019 [No ultra petita challenge if award dismisses all claims]

4A_450/2017 of 12 March 2018 [Allocation of costs cannot be challenged – No equal treatment of time extension requests – Refusal to appoint an expert]

4A_64/2019 of 3 December 2019 [Entitlement to costs of co-defendant after withdrawal of annulment request following settlement between plaintiff and another defendant]

4A_74/2019 of 31 July 2019 [Arbitral tribunal not obliged to call the author of an important letter as a witness, nor obliged to obtain a witness statement from an individual whose appearance it requested]

4A_202/2020 of 5 August 2020 [Failure of plaintiff to elect Swiss domicile for service purposes – Annulment request inadmissible]

4A_306/2019 of 25 March 2020 [Clorox v Venezuela – Treaty award set aside for wrongful denial of jurisdiction]

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EDITORS