

# The Contents of the ASA Bulletin, Volume 37, Issue 4 (December 2019)

## **Kluwer Arbitration Blog**

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We are happy to report that the latest issue of the ASA Bulletin is now available and includes the following articles and cases:

### ARTICLES

Elliott GEISINGER, *De la musique avant toute chose, et pour cela préfère l'impair*

In his last message as ASA President, Elliott GEISINGER exhorts us to prefer the “uneven” in arbitration, namely diversity.

Matthias SCHERER, Angela CASEY, *Domestic Review of Investment Treaty Arbitrations: the Swiss Experience Revisited*

This article offers an overview of the decisions of the Swiss Supreme Court rendered in the past decade involving treaty claims or claims under the Energy Charter Treaty: *Russia v. Yukos - Hungary v. EDF - Recofi v. Vietnam - Poland v. Hortel - Serbia v. Mytilineos - Russia v. Ukrnafta & Stabil - India v. Deutsche Telekom*.

David ROSENTHAL, *Complying with the General Data Protection Regulation (GDPR) in International Arbitration - Practical Guidance*

David ROSENTHAL provides practical guidance on how to comply with data protection requirements under the EU General DATA Protection Regulation (GDPR) in international arbitration. A template data protection agreement is included at the end of the article.

Gustavo SCHEFFER DA SILVEIRA, Brazilian Special Appeal No. 1.639.035-SP, 18 September 2018, *Paranapanema S/A vs/ BTG Pactual S/A and Santander Brasil S/A*

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.

Johannes LANDBRECHT, *Commercial Arbitration in the Era of the Singapore Convention and the Hague Court Conventions*

Johannes LANDBRECHT presents the Singapore Convention (2018) concerning mediated settlements, the Hague Choice of Court Convention (2005) and Hague Judgment Convention (2019) and considers their impact on the competitiveness of international commercial arbitration.

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)*

Simon GABRIEL reports 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 may rely on Article II NYC to resist a state court's jurisdiction.

Morten FRANK, *Arbitration 'if any' or 'to be settled': A pathological yet curable agreement to arbitrate?*

This article focuses on the interpretation and legal consequences of pathological arbitration clauses providing for arbitration "if any", "if required" or "to be settled" in the light of the case law of English and U.S. courts.

Lorenz RAESS, *Challenging Court Assistance in the Taking of Evidence in International Arbitration – the Swiss Perspective*

This contribution sheds light on 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 Article 184(2) of the Swiss Private International Law Act.

## DECISIONS OF THE SWISS FEDERAL SUPREME COURT

- 4A\_646/2018 (145 III 199) 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*]
- 4A\_98/2017 (143 III 462) of 20 July 2017 [*Russia v. Yukos Capital: Request to set aside treaty award (ECT) – Jurisdiction of the arbitral tribunal – Request premature*]
- 4A\_34/2015 (141 III 495) of 6 October 2015 [*Hungary v. EDF: Request to set aside treaty award (ECT) – 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*]