

Kluwer Arbitration Blog

The Contents of the ASA Bulletin, Volume 38, Issue 2 (June 2020)

Matthias Scherer (Editor in Chief, ASA Bulletin; LALIVE) and Catherine Anne Kunz (LALIVE) · Monday, July 20th, 2020

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

ARTICLES

Felix DASSER, *The Times They Are A-Changin' (Fine – But How Much and For How Long, Exactly? And What Does It All Mean For Us?)*

In his message, 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 users' needs.

Caroline MING, Christian IOVENE, *Advantages and Benefits of the Revised Swiss Rules of Mediation 2019 – in Light and in Line with the Singapore Convention*

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).

Bernhard BERGER, *Die Schweiz als Schiedsort für Investitionsstreitigkeiten – Erkenntnisse aus der neueren Rechtsprechung des Bundesgerichts – Teil II*

Bernhard BERGER provides practical guidance on the do's and don'ts, pitfalls and challenges of conducting arbitral proceedings before investment treaty tribunals seated in Switzerland in light of his survey on the case law of the Swiss Federal Supreme Court relating to investment treaty awards (see ASA Bull. 2020/1 for Part I of his article).

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)*

Hans-Ueli VOGT and Patrick SCHMIDT address the material and formal validity as well as the

necessary and admissible content of clauses contained in the articles of an association or corporation further to a recent decision of the Swiss Supreme Court on this issue (see ASA Bull. 2020/1 for Part I of their article).

Jörg RISSE, *The Shadow Arbitrator: Mere Luxury or Real Need?*

Jörg RISSE discusses the role of a shadow arbitrator, his/her interaction with counsel and added value for the arbitration.

Nobumichi TERAMURA, *Ex Aequo et Bono and Arbitration Theories: an Arbitrator's Subjective Perspective of Fairness as the Final 'Gap-Filler'*

Nobumichi TERAMURA submits 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.

Ole JENSEN, *Aligning Arbitrator Assistance with the Parties' Legitimate Expectations: Proposal of a 'Traffic Light Scale of Permissible Tribunal Secretary Tasks'*

Ole JENSEN presents a new approach to the appointment of tribunal secretaries, namely a formal appointment process culminating in 'Tribunal Secretary Terms of Appointment'.

Olivier MARQUAIS, Alain GREC, *Investment Management and Corporate Structuring Considerations for Third-Party Litigation Funders in Luxembourg*

Oliver MARQUAIS and Alain GREC shed light on the activity of third-party funders 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.

Daniel GREINER, Anastasia MEDVEDSKAYA, *Beyond High Hopes and Dark Fears: Towards a Deflationary View of Soft Law in International Arbitration*

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 GREINER and Anastasia MEDVEDSKAYA examine its legitimacy and efficacy in international arbitration.

DECISIONS OF THE 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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The graphic features a dark background with white text and a circular icon. The icon depicts a group of stylized human figures, with a magnifying glass positioned over one of them, suggesting a search or investigation process. The background is accented with horizontal lines in blue and green.

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