

Kluwer Arbitration Blog

The Contents of the ASA Bulletin, Volume 38, Issue 4 (December 2020)

Matthias Scherer (Editor in Chief, ASA Bulletin; LALIVE) and Catherine Anne Kunz (LALIVE) · Friday, January 8th, 2021

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 Revised Swiss Lex Arbitri: A Story of Two Dozen Jewels*

In his message, ASA President Felix DASSER commends the light touch revision of the Swiss *lex arbitri* which entered into force on 1 January 2021.

Hamish LAL, Brendan CASEY, Josephine KAIDING, Léa DEFRANCHI, *Multi-Tiered Dispute Resolution Clauses in International Arbitration – The Need for Coherence*

Hamish LAL, Brendan CASEY, Josephine KAIDING and Léa DEFRANCHI submit that more coherence is needed in the treatment of multi-tiered dispute resolution clauses in international arbitration.

Reto Andrea TETTAMANTI, *Intertemporales Schiedsrecht. Die für die Revision des 12. Kapitels IPRG relevanten Übergangsbestimmungen*

Reto Andrea TETTAMANTI examines the transitional law provisions applicable to the revision of Chapter 12 of the Swiss Private International Law Act (PILA), Switzerland's *lex arbitri*.

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*

Simon BACHMANN assesses the impact of third-party funding on requests for security for costs in international arbitration proceedings seated in Switzerland.

Giulio PALERMO, Panagiotis KYRIAKOU, *Leveraging the Standard of Ex Aequo et Bono to Increase Diversity, Flexibility and Efficiency: Insights from the Basketball Arbitral Tribunal*

Giulio PALERMO and Panagiotis KYRIAKOU advocate in favour of the *ex aequo et bono* standard in international arbitration in light of the case law of the Basketball Arbitral Tribunal.

Andreea NICA, *Case Note on the Decision of the Swiss Federal Tribunal in Clorox v. Venezuela*

Andreea NICA presents the recent decision of the Swiss Federal Supreme Court rendered on 25 March 2020 in *Clorox v. Venezuela* (4A_306/2019), which is the first time an award in an investment treaty arbitration seated in Switzerland is set aside.

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*

Samantha NATAF reports on two recent decisions of the English and French Courts relating to the enforcement of the same award which highlight the divergent approaches of the two jurisdictions regarding the law applicable to international arbitration agreements.

Mahmoud Anis BETTAIEB, *Le juge tunisien et la promotion de l'arbitrage*

Mahmoud Anis BETTAIEB discusses the important role played by the Tunisian judiciary in promoting arbitration as a private dispute resolution mode.

Nadia SMAHI, *Due Process Under the Swiss Rules of International Arbitration*

Nadia SMAHI analyses 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.

DECISIONS OF THE SWISS FEDERAL SUPREME COURT

- [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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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

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