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# Kluwer Arbitration Blog

## The Contents of the ASA Bulletin, Volume 39, Issue 3 (September 2021)

Matthias Scherer (Editor in Chief, ASA Bulletin; LALIVE) and Catherine Anne Kunz (LALIVE) · Thursday, November 4th, 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, *Arbitration Toolbox by ASA – Self-Empowerment with Safety Belts*

ASA President Felix DASSER presents the Arbitration Toolbox by ASA, an interactive online tool that assists users in navigating the various stages of arbitral proceedings.

Louis CHRISTE, *The Use of 28 U.S.C. § 1782 in Swiss Seated Arbitrations*

Louis CHRISTE discusses discovery under Section 1782 of Title 28 of the United States Code and provides a practical overview of the issues that parties to an international arbitration seated in Switzerland may encounter when seeking evidence located in the U.S. on that basis.

Flavio PETER, Urs WEBER-STECHER, *The Myth of Partial Awards on Advances on Costs in International Commercial Arbitration in Switzerland under the Swiss Rules*

Flavio PETER and Urs WEBER-STECHER examine the nature of advances of costs under article 41 of the Swiss Rules, describe the circumstances in which there may be valid grounds for a party to refuse to pay the advances as well as the consequences of non-payment in the light of recent cases.

Nadia SMAHI, *Applying “Foreign” Mandatory Laws in International Arbitration Despite the Parties’ Choice of Law: A Necessary Evil?*

Nadia SMAHI addresses the scenario where arbitrators must decide whether to apply a foreign mandatory law invoked by one party but rejected by the other and the potential risks involved.

*Alfred LEWIS, Conditional Arbitrability – A Questionable Innovation in Russian Arbitration*

Alfred LEWIS presents and compares two doctrines dealing with arbitrability and public policy concerns: the second look doctrine, first espoused by the U.S. Supreme Court in *Mitsubishi v Soler* in 1985, and the doctrine of conditional arbitrability introduced in the 2015 reform of Russian arbitration law.

*Anna MASSER, Eileen LÖBIG, May Arbitral Tribunals Seated in Switzerland and Applying German Law or the CISG Estimate Quantum?*

Anna MASSER and Eileen LÖBIG compare the approaches to the right for arbitral tribunals to estimate damages under Swiss and German law and analyse how arbitral tribunals seated in Switzerland and applying German law or the Convention on the International Sale of Goods may estimate the final amount to be awarded.

*Carlos A. MATHEUS LÓPEZ, A Comparative Analysis of the Setting Aside of Arbitral Awards from a Peruvian Perspective*

Carlos A. MATHEUS LÓPEZ looks at the setting aside of arbitral awards, with an emphasis on the practice in Peru.

*Ilias BANTEKAS, The Requirement of Signed and Dated Awards: Are Arbitrators Ever Entitled Not to Sign?*

Ilias BANTEKAS examines whether arbitrators are entitled not to sign their awards, by analysing the arbitrators' duty to sign their awards, the circumstances in which an arbitrator's refusal to sign may be permissible as well as the legal consequences of such a refusal.

*Guido CARDUCCI, Remote or Virtual Arbitration Hearings as “New Normal”: Governing Law and Rules, Seat, Annulment, Recognition and Enforcement*

Guido CARDUCCI analyses the legal and technical issues raised by virtual or remote hearings.

DECISIONS OF THE SWISS FEDERAL SUPREME COURT

- [4A\\_564/2020 of 7 June 2021](#) [*Appeal to CAS excluded by the applicable sport regulation – CAS*]

*award set aside]*

- [4A\\_332/2020 of 1 April 2021](#) [*No mandatory duty to repeat proceedings in case of replacement of an arbitrator*]
- [4A\\_124/2020 \(147 III 107\) of 13 November 2020](#) [*Partial annulment of ICC award – No extension of arbitration clause to non-signatory sub-contractor*]
- [4A\\_593/2020 of 23 June 2021](#) [*Named arbitrator removed – Arbitration clause not inoperative – Challenge of arbitrator pending the arbitration*]
- [4A\\_192/2020 of 22 February 2021](#) [*Successful plaintiff ordered to pay costs of Federal Tribunal proceedings*]
- [4A\\_318/2020 of 22 December 2020](#) [*Revision of a CAS award – Partiality of arbitrator*]
- [4A\\_626/2020 of 15 March 2021](#) [*Timeliness of appeal to CAS is an issue of admissibility, not jurisdiction*]

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