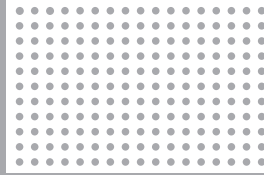


Series on International Arbitration

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Volume 4 **Selected Papers
on International
Arbitration**

Editors:

Daniel Girsberger
Christoph Müller



Stämpfli Publishers

The SAA Series on International Arbitration contains the best graduation papers of all participants who successfully completed the post graduate studies in international arbitration of the SAA Swiss Arbitration Academy. The papers cover different aspects of international arbitration. The SAA Series is published on a yearly basis.

The Swiss Arbitration Academy is a private institution founded and managed by the editors. Each year, the SAA offers and conducts an intensive and practical course in international arbitration. The training is designed for lawyers, in-house counsel, and other professionals interested in cutting edge international dispute resolution education. All participants, who successfully complete the course, which includes the submission of the final paper, are awarded the SAA Certificate and the title Arbitration Practitioner ArbP.

Volume 4

Selected Papers on International Arbitration



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Note from the Editors

The current edition of the SAA-Series on International Arbitration continues to contain the best graduation papers of all participants who successfully completed the post graduate studies in international arbitration and who have been awarded the “Certificate of Advanced Studies” in International Arbitration. This CAS is awarded by the Universities of Lucerne and Neuchâtel, in co-operation with the SAA Swiss Arbitration Academy. Besides stern academic standards, the papers must meet a high benchmark of topicality and relevance for international arbitration practitioners. The SAA-Series is edited by the two members of the academic supervisory board of the SAA’s Academic Council.

In the current volume, you will find five research papers that touch upon different aspects of international arbitration and domestic Swiss arbitration. Caspar Feest examines whether arbitral awards that have been set aside at the seat of arbitration can still be enforced in other jurisdictions. Andreas Lienhard analyses the consequences of Swiss Supreme Court decision 136 III 467 on the arbitrability of domestic employment law disputes in Switzerland. Nicolas Pellaton elaborates on the procedural aspects of revision of arbitral awards in Swiss domestic and international arbitration. Barbara Schroeder de Castro Lopes discusses selected issues on alternative dispute resolution involving cross-border technology licencing agreements. Finally, Claudia Walz examines the circumstances under which interim measures before arbitral tribunals or national courts can be sought.

The Swiss Arbitration Academy (SAA) is a private institution founded and directed by members of its Academic Council. The CAS Arbitration is offered each year and is designed for lawyers, in-house counsel, and other professionals interested in cutting edge international dispute resolution education. During four modules of five days each, the program comprehensively examines all fundamental aspects of international commercial arbitration, including the practice and proceedings of the major arbitration institutions, such as the Swiss Chambers of Commerce, ICC, LCIA, SCC, DIS, VIAC, ICDR (AAA), CAS, WIPO as well as the SCAI. In addition, the program reviews the features of ad hoc arbitration. The rigorous program requires from each participant in-depth preparation and active participation during the training. All participants who successfully complete the course, which includes the submission of the final paper, are awarded the CAS Certificate. For further details, please visit www.swiss-arbitration-academy.ch.

The editors would like to thank the authors for their valuable contributions contained herein and are delighted to present their papers to the arbitration community. The editors further thank Stämpfli Verlag for its continued support in publishing these highly interesting and promising articles.

Lucerne/Neuchâtel, May 2018

Daniel Girsberger

Christoph Müller

Table of Contents

Note from the Editors	V
List of Abbreviations	XV

CASPAR FEEST

ENFORCEMENT OF AWARDS SET ASIDE AT THE SEAT OF THE ARBITRATION	1
Table of Contents	3
I. Introduction	4
II. The New York Convention	5
A. Grounds for Refusing Recognition or Enforcement	6
B. Grounds for Setting Aside Arbitral Awards	7
III. Discretion of Enforcement Courts	8
A. Interpretation of Article V(1).....	9
1. Wording, Context and Purpose of Article V(1)	9
2. Drafting History of Article V(1)	11
3. Conclusion	11
B. Interpretation of Article V(1)(e)	11
1. Wording, Context and Purpose of Article V(1)(e)	11
2. Drafting History of Article V(1)(e)	13
3. Conclusion	13
IV. Limits of Discretion	14
A. Local Standard Annulment	14
B. Foreign Judgement Approach.....	15
C. Conclusion	16
V. Case law	17
A. France (<i>Hilmarton et al.</i>)	17
B. United States (<i>Chromalloy et al.</i>)	19
C. The Netherlands (<i>Yukos</i>)	23
VI. Conclusion	25
About the Author	26

ANDREAS LIENHARD

ARBITRABILITY OF DOMESTIC EMPLOYMENT LAW DISPUTES IN SWITZERLAND – AN ANALYSIS OF THE SWISS SUPREME COURT’S DECISION 136 III 467	27
Foreword by the Author	29
Table of Contents	31
I. Introduction	32

VII

II. Basic Ideas of Swiss Domestic Arbitration and Swiss Employment Law	33
III. The Decision 136 III 467, Dated 28 June 2010, of the Swiss Supreme Court	34
IV. The Criticism of BGE 136 III 467 by Legal Doctrine	36
A. The Agreement to an Arbitration Clause Is not a Waiver of the Employee's Claims	37
B. There Are Other Contractual Claims That Result from Mandatory Laws and That Are Arbitrable	37
C. BGE 136 III 467 Does not Apply to Art. 354 SCCP	38
D. BGE 136 III 467 Leads to a Split of Jurisdiction	38
V. Discussion of BGE 136 III 467 and Follow-Up Questions	39
A. <i>Follow-Up Question 1</i> : When Is an Employment Law Dispute Considered "Domestic" and, Hence, Art. 354 SCCP and BGE 136 III 467 Apply?	39
B. <i>Follow-Up Question 2</i> : What Consequences, if any, Does an Opt-Out of Art. 353 ff. SCCP Have on the Arbitrability in Terms of Art. 354 SCCP and BGE 136 III 467?	40
C. <i>Follow-Up Question 3</i> : If the Employer and the Employee Agreed on the Applicability of a Foreign Law Based on Art. 381(1)(a) SCCP, Is the "Free Disposability" in Terms of Art. 354 SCCP to Be Assessed According to the Law Chosen by the Parties?	43
D. <i>Follow-up Question 4</i> : Does BGE 136 III 467 Apply to All Employees Irrespective of Their Position within the Employer Company?	44
E. <i>Follow-Up Question 5</i> : Are the Employee's Claims That Do Not Result from Mandatory Laws or from a Collective Employment Agreement Arbitrable in Terms of Art. 354 SCCP? And Is an Arbitration Clause Concluded at the Beginning of the Employment Relationship Valid Regarding these Claims?	45
F. <i>Follow-Up Question 6</i> : Do the Employee's Claims That Are Covered by Art. 341(1) CO Become "Freely Disposable" in Terms of Art. 354 SCCP if the Employee Is Appropriately Compensated for His Agreement to the Arbitration Clause? ...	46
G. <i>Follow-Up Question 7</i> : At what Moment in Time Must the Employee's Claims Be "Freely Disposable" in Terms of Art. 354 SCCP for the Arbitration Clause to Be Valid?	48
H. <i>Follow-Up Question 8</i> : Does the Arbitral Tribunal Have Jurisdiction to Hear Claims Resulting from Mandatory	

VIII

Employment Laws or a Collective Employment Agreement if the Employee Makes an Appearance (<i>Einlassung</i>)?.....	50
I. <i>Follow-Up Question 9</i> : At what Stage in the Proceedings and with what Cognition Has a State Court or an Arbitral Tribunal to Decide on the Arbitrability of the Employee's Claims and/or the Validity of the Arbitration Clause?.....	51
VI. Assessment of BGE 136 III 467 and Conclusion	55
About the Author	58

NICOLAS PELLATON

REVISION OF ARBITRAL AWARDS IN SWITZERLAND – PROCEDURAL ASPECTS	59
Table of Contents.....	61
I. Introduction.....	63
II. The General Concept of Revision	63
III. Revision in Domestic Arbitration	66
A. General Remarks	66
B. Decisions Subject to Revision	67
1. Domestic Nature.....	67
2. Types of Decisions	68
3. Decision of the Arbitral Tribunal vs. Decision of the Swiss Supreme Court	69
C. Competent Authority to Rule on <i>Rescindant</i>	69
1. The Solution Provided for by the SCCP	69
2. (No) Possibility of Derogating from the Solution Provided for by the SCCP	71
D. Other Admissibility Requirements	72
1. Parties (Standing to Sue; Interest in Bringing Proceedings)	72
2. Time Limits	72
3. Language(s).....	73
E. Proceedings on <i>Rescindant</i>	73
1. Power of Review of the Cantonal Court	73
2. Proceedings	74
F. Decision on <i>Rescindant</i>	75
1. Types and Effects	75
2. Legal Remedies	76
G. Proceedings on <i>Rescisoire</i> (i.e., After a Positive Decision on <i>Rescindant</i>).....	78
1. Reconstitution of the Arbitral Tribunal	78
2. Repetition of (Part of) the Arbitral Proceedings.....	79
H. Decision on <i>Rescisoire</i>	79
1. Types and Effects	79

IX

2. Legal Remedies.....	80
I. Waiver of the Right to Apply for Revision.....	80
IV. Revision in International Arbitration	81
A. General Remarks	81
B. Decisions Subject to Revision	83
1. International Nature	83
2. Types of Decisions	83
3. Decision of the Arbitral Tribunal vs. Decision of the Swiss Supreme Court	84
C. Competent Authority to Rule on <i>Rescindant</i>	84
1. The Supreme Court Has Declared Itself Competent	84
2. The Preliminary Draft Bill on the Modification of Chapter 12 of the SPILA Confers Jurisdiction to the Supreme Court	86
3. Discussion on the Justification of Such a Choice.....	86
a) Introductory Remarks	86
b) Consistency with Domestic Arbitration Should Not Prevail Over Conformity with General Rule Prevailing in Swiss Civil State Court Procedure.....	87
c) The Argument Arising from the Will of the Legislator to Limit Legal Remedies Is Irrelevant	88
d) The Passage of Time and/or the Fact That the Arbitral Tribunal May Be <i>Functus Officio</i> Are Not (Insuperable) Obstacles	88
e) The Valuable Support Offered by the Arbitral Institutions and/or by the <i>Juge d'Appui</i>	90
f) Interim Conclusion: The Arbitral Tribunal Should Be the Competent Authority to Rule on <i>Rescindant</i>	91
4. Is the Supreme Court's Jurisdiction Exclusive?.....	92
D. Other Admissibility Requirements	94
1. General Requirements	94
2. Parties (Standing to Sue; Interest in Bringing Proceedings)	95
3. Time Limits	96
4. Language(s).....	98
E. Proceedings on <i>Rescindant</i>	98
1. Power of Review of the Supreme Court.....	98
2. Proceedings	99
F. Decision on <i>Rescindant</i>	101
1. Types and Effects	101
2. Legal Remedies	102
G. Proceedings on <i>Rescisoire</i> (i.e., After a Positive Decision on <i>Rescindant</i>).....	103
1. Reconstitution of the Arbitral Tribunal	103

2. Repetition of (Part of) the Arbitral Proceedings.....	104
H. Decision on <i>Rescisoire</i>	105
1. Types and Effects.....	105
2. Legal Remedies.....	105
I. Waiver of the Right to Apply for Revision.....	106
1. The Current State of the Question According to Case Law and Legal Doctrine	106
2. The Preliminary Draft Bill on the Modification of Chapter 12 of the SPILA.....	107
V. Conclusion	108
About the Author.....	110

BARBARA SCHROEDER DE CASTRO LOPES

SELECTED ISSUES OF ALTERNATIVE DISPUTE RESOLUTION INVOLVING CROSS-BORDER TECHNOLOGY LICENSING AGREEMENTS	111
Table of Contents.....	113
I. Introduction.....	114
II. Why Arbitration is Useful in International Disputes Involving Technology Licensing Agreements	116
A. General Advantages of Arbitration over State Courts	116
B. Confidentiality	117
C. Particular Reasons to Prefer Arbitration with Regard to Technology Licensing Contracts	118
D. When Does Arbitration Not Work?.....	119
III. Selected Issues	120
A. Pre-licensing Disputes	120
1. Pre-licensing FRAND Disputes	120
a) Standard Essential Patents (SEPs).....	120
b) Competition Law Concerns	121
c) Standard Setting Organizations (SSO) and their IPR Policies.....	122
d) The Role of ADR in FRAND Disputes: The Commitments of Samsung in the Samsung v. Apple Dispute.....	122
e) The Role of ADR in FRAND Disputes: Results of a Public Consultation Carried out by the European Commission	124
f) Mandatory or Voluntary Nature of ADR in FRAND Disputes?	124
g) Comments	126
2. License Option Agreements	129
a) Option Agreements	129

b) The Parties' Interests and Possible Disputes	130
c) Case Example	131
d) Comments	131
B. Jurisdictional issues: The Scope of the Arbitration Clause	133
1. IP Carve Out Provisions	133
a) Carve Out Provisions	133
b) Case Example	134
2. Post-termination Disputes	135
3. Comments	135
C. Setting Aside Proceedings and Enforcement: Violation of EU Competition Law	136
1. Competition Law as a Matter of Public Policy Within the Meaning of the New York Convention	136
2. Recent Case Law	137
3. Comments	138
IV. Summary and Conclusion	140
About the Author	142
 CLAUDIA WALZ	
INTERIM MEASURES: SEEKING THEM BEFORE ARBITRAL TRIBUNALS OR COURTS?	143
I. Table of ContentsIntroduction.....	145
II. Interim Measures – General Overview	146
A. Definition and Types of Interim Measures	146
B. Prerequisites for Obtaining Interim Relief.....	148
III. Concurrent Jurisdiction of Arbitral Tribunals and State Courts.....	149
A. In General	149
B. The Power of State Courts.....	150
C. The Power of Arbitral Tribunals.....	152
1. Party Autonomy	152
2. The Swiss Rules and the ICC Rules.....	153
3. Broad Discretion of Arbitral Tribunals	154
D. Situation Before the Constitution of the Arbitral Tribunal.....	155
IV. Issues to Consider when Deciding from which Authority to Seek Interim Measures	156
A. In General	156
B. Type of Relief Requested	156
C. Urgency	158
D. <i>Ex Parte</i> Decisions	159
E. Knowledge of the File	162
F. Arbitrators' Know-how	162

G. Confidentiality	163
H. Compliance.....	163
I. Third Parties	166
J. Appeal.....	166
K. Enforceability/Geographical Reach.....	167
L. A Practical Example: The <i>Sauber</i> Case.....	171
V. Evaluation and Recommendation.....	173
VI. Concluding Remarks	175
About the Author.....	176

List of Abbreviations

ADR	Alternative Dispute Resolution
Art./Arts	Article/s
BaslerKomm	Basler Kommentar: Legal commentary from Basel
BernerKomm	Berner Kommentar: Legal commentary from Bern
BIT	Bilateral Investment Treaty
BGE	Leading decisions of the Swiss Supreme Court published in the official collection
BGG	Swiss Supreme Court Act of 17 June 2005 (SR 173.110)
CA	Cantonal Arbitration Convention of 27 March 1969 (SR 279)
CHF	Swiss Franc(s)
CO	Swiss Code of Obligations of 30 March 1911 (SR 220)
DEBA	Swiss Debt Enforcement Act of 11 April 1889 (SR 281.1)
ed./eds.	editor/s
et al.	et alii (and others)
European Convention	European Convention on International Commercial Arbitration of 21 April 1961
f./ff.	and the following page/s
Geneva Convention	Geneva Convention on the Execution of Foreign Arbitral Awards of 26 September 1927
ICC	International Chamber of Commerce
ICC Court	International Court of Arbitration of the ICC
ICC Rules	Rules of Arbitration of the ICC, amended and effective as of 1 March 2017
ICCA	International Council for Commercial Arbitration

ICDR	International Centre for Dispute Resolution, international division of the American Arbitration Association
ICSID	International Centre for Settlement of Investment Disputes
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of other States of 18 March 1965
New York Convention	New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards
Panama Convention	Inter-American Convention on International Commercial Arbitration of 30 January 1975
para./paras.	paragraph/s
RSDIE	Swiss Review of International and European Law
RSPC/RZZP	Swiss Review of Civil Procedure
SCCP	Swiss Code of Civil Procedure of 19 December 2008 (SR 272)
SLA	Swiss Labour Act of 13 March 1964 (SR 822.11)
SPILA	Swiss Private International Law Act of 18 December 1987 (SR 291)
Swiss Rules	Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution, amended and effective as of 1 June 2012
TFEU	Treaty on the Functioning of the European Union of 13 December 2007
UNCITRAL	United Nations Commission on International Trade Law
UNCITRAL Model Law	UNCITRAL Model Law on International Commercial Arbitration of 25 June 1985, with amendments as adopted in 2006
Vienna Convention	Vienna Convention on the Law of Treaties of 23 May 1969
WIPO	World Intellectual Property Organization

WIPO Rules	WIPO Arbitration Rules, amended and effective as of 1 June 2014
YCA	Yearbook Commercial Arbitration, Deventer
Zürcher-Komm	Zürcher Kommentar (legal commentary)
ZGB	Swiss Civil Code of 10 December 1907 (SR 210)
ZPO	Schweizerische Zivilprozessordnung (Zivilprozessordnung) vom 19. Dezember 2008 (SR 272), also referred to as Swiss Code of Civil Procedure (SCCP)
ZZZ	Swiss Review of Civil Procedure and Enforcement Law

Enforcement of Awards Set Aside at the Seat of the Arbitration

Caspar Feest

