

# World & Arbitration & Mediation Report



Vol. 16, No. 1

Covering Dispute Resolution in the United States and Around the World

January 2005

## HIGHLIGHTS

Concerns about the **fairness of consumer and employment arbitration** continue to be present in arbitral law and practice.

For example, **JAMS** has announced that it will no longer administer arbitrations that arise from arbitral clauses that include **waivers of class action relief**. (Story on page 3.)

The **NASD** has amended its *Code of Arbitration Procedure* to afford investors greater protection against **one-sided agreements** to arbitrate security disputes. Brokers, for example, must notify investors that an arbitration agreement is included in the basic contract and explain its meaning and impact on their rights. (Story on page 3.)

Also, **Texas state legislators** are considering draft legislation that redresses the imbalance in contracts for **mandatory consumer arbitration**. When contracts are characterized by unequal bargaining power, consumers should maintain their access to courts, according to proposed legislation. (Story on page 4.)

In *Worldwide Perspectives on Mediation*, **David Spencer** and **Nadja Alexander** discuss the integration and operation of mandatory mediation in Australia. The authors distill a list of factors from the case law that courts consider in issuing orders that the parties mediate their dispute. (The *Mediation Column* begins on page 11.)

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In a *Perspectives* piece, **Professor Jean-François Gaudreault-DesBiens**, Associate Professor, Faculty of Law, University of Toronto, explores the public law dimension of arbitration. He discusses **faith-based arbitration** in the context of a multicultural, democratic society. He advances the controversial idea that some form of merits review by courts of faith-based arbitral awards is necessary in order to protect

the constitutional rights of members of minority groups. The standard form of lax or perfunctory judicial supervision of arbitral awards could allow “religious totalitarianism” to be practiced and to escape the restrictions of public law protections. Professor Gaudreault-DesBiens refers to the example of **Sharia-based arbitration** applying to family-related and personal-status-related disputes occurring in the province of Ontario. (The *Perspectives* section begins on page 18.)

Finally, **Professor Frédéric Bachand**, WAMR’s Investment Arbitration Editor, reports on an **ICSID Discussion Paper** meant to improve ICSID arbitration procedures and practices. The ICSID paper addresses interim measures, arbitrator disclosure requirements, expedited dispositions of cases, third-party access to proceedings, and the appeal of awards. (Story on page 6.)

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### Publication and Subscription Information

The WORLD ARBITRATION AND MEDIATION REPORT is published monthly by JurisNet LLC, 71 New Street, Huntington, New York 11743; telephone: (631) 673-3330; fax: (631) 673-9117; (800) 887-4064; e-mail: [subscriptions@jurispub.com](mailto:subscriptions@jurispub.com). Visit our website at <http://www.jurispub.com>. The Report is distributed worldwide by JurisNet LLC. Subscription price: In the United States: \$650.00 yearly; International: \$710.00 yearly. Prices include shipping & handling and complete online access to the full archive of *all* WAMR issues. ISSN # 0960-0949.

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