

# World Arbitration & Mediation Report



Vol. 14, No. 8

Covering Dispute Resolution in the United States and Around the World

August 2003

## HIGHLIGHTS

The U.S. Supreme Court has issued its ruling in *Green Tree Fin. Corp. v. Bazzle*. In *Bazzle*, the South Carolina state Supreme Court had ruled that, under state contract law, the silence of the arbitration agreement allowed arbitrable claims to be submitted to **classwide arbitration**. The Court did not take a position on whether the lower court's interpretation of the contract was accurate or justifiable, nor did it address the fairness of arbitration agreements in the consumer context—for example, by holding that consumer remedies should not be restricted by the reference to arbitration. Rather, the Court envisaged the issue in *Bazzle* as a jurisdictional question: as to which institution should decide what aspect of the **arbitrability** question. Returning to *Kaplan* and *Howsam*, the Court ruled that **“the question—whether the agreement forbids class action—is for the arbitrator to decide.”** The Court, however, could only muster a plurality opinion for its determination. (Story at page 215.)

A **new Japanese arbitration law** is likely to be enacted this year and will become effective in early 2004. The proposed legislation has been in-the-making for nearly two decades. It incorporates parts of the UNCITRAL Model Law and draws its content from a variety of other sources of modern transborder arbitral practice. **WAMR** will publish the official translation of the new law as soon as it becomes

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available. [Editor's Note: The law was enacted on July 25, 2003.] (Story at page 217.)

The **French Court of Cassation** has held that an **agreement** to engage in **conciliation** or **mediation** is as binding as an arbitration agreement. In many respects, the French Court considers such agreements equivalent. (Story at page 219.)

In the *Perspectives* section, **Tran Tuan Pong** and **Duyen Vo**, both associated with the Vietnam International Law Firm, provide a set of thorough observations on the *Ordinance on Commercial Arbitration of Vietnam of February 25, 2003*. They concluded that the *Ordinance* “gives a number of advantages for choosing arbitration for resolution. The enforcement disadvantage of arbitration is removed because arbitral awards can be enforced under the enforcement system of civil judgments. In addition, for complex international cases, the parties have the right to appoint foreign experts as arbitrators and may even choose an arbitration taking place outside Vietnam.” (The *Perspectives* section begins on page 223.)

The issue also contains a **bibliography** and **NAF Domain Name Awards**. (See pages 227 and 229.)

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The Dickinson School of Law

Juris Publishing, Inc., Huntington, NY, USA.

Published in conjunction with Penn State University's Dickinson School of Law, Carlisle, PA, USA

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#### Publication and Subscription Information

The WORLD ARBITRATION AND MEDIATION REPORT is published monthly by Juris Publishing, Inc., 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 Juris Publishing, Inc. 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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