

## **MISSION STATEMENT**

Stockholm International Arbitration Review illustrates the development of the international arbitral process, the enforcement of arbitral awards and the use of legal norms in the settlement of, primarily commercial transnational, disputes. By contributing to the scholarly debate on international arbitration, Stockholm International Arbitration Review seeks to advance ideas which will improve the knowledge and the functioning of the international arbitral process.

Emphasis is placed on the publication of extracts of arbitral awards and court decisions with in-depth comments by scholars and practitioners. The approach shall be comparative, articles and comments be reasoned and explanatory, accessible also to non-specialists.

Contributions in the Stockholm International Arbitration Review shall be published in the languages currently used in international arbitration.

### **Цели сборника**

Сборник Stockholm International Arbitration Review содержит материалы о развитии международного арбитражного процесса, исполнении арбитражных решений и использовании правовых норм в урегулировании, в первую очередь, международных коммерческих споров. Сборник Stockholm International Arbitration Review, способствуя развитию научной дискуссии о международном арбитраже, направлен на распространение идей, повышающих уровень знаний и совершенствующих функционирование международного арбитражного процесса.

Акцент делается на публикации отрывков арбитражных и судебных решений в сопровождении подробных комментариев ученых и практикующих юристов. Материалы сборника предполагают использование сравнительного метода, статьи и комментарии должны быть аргументированы, содержать развернутые пояснения, доступные для понимания неспециалистов.

Материалы сборника Stockholm International Arbitration Review должны быть составлены на языках, используемых в настоящее время в международных арбитражных разбирательствах.

### **前言**

斯德哥尔摩仲裁报告致力于研究国际仲裁程序的发展,仲裁裁决的强制执行以及如何利用法律规范来解决纠纷,尤其是国际商事纠纷.本报告通过促进对国际仲裁的学术性论争,来努力寻求先进理念,推动国际仲裁理论和实务的发展.

本报告着重摘录了部分仲裁裁决以及法院判决,并附有学者以及法律工作者的专业评论.报告中的文章和评论均采用比较的方法来阐述理由,非专业人士也能清楚明白.

本报告的稿件以国际仲裁通用的语言出版.

Stockholm International Arbitration Review is published by Juris Publishing Inc., in association with the Arbitration Institute of the Stockholm Chamber of Commerce, P.O. Box 16050, SE-103 21 Stockholm.

Mode of citation: Stockholm Int Arb Rev 2006:1

ISSN Number 1558-271X

All rights reserved. No part of this publication may be reproduced, stored in retrieval system, transmitted in any form or by any means, electronic, mechanical, photocopy, recording or otherwise without the written permission of the publisher.

# **STOCKHOLM INTERNATIONAL ARBITRATION REVIEW**

---

## **Volume 2006:1 TABLE OF CONTENTS**

### **EDITORIAL**

---

Sigvard Jarvin, General Editor	vii
--------------------------------	-----

### **ARTICLES**

“Separability” in the United States Supreme Court <i>Alan Scott Rau</i>	1
The Place of Arbitrators in Combating Money Laundering <i>Tatiana Minaeva</i>	33
The New Danish Arbitration Act <i>Joseph Lookofsky &amp; Karsten Kristoffersen</i>	43
Parties’ Contribution to the Arbitral Award: Submission of a Synopsis of the Award <i>Jean-Georges Bettó</i>	65

---

### **INVESTMENT DISPUTES**

Mr. Franz Sedelmayer (Germany) v. the Russian Federation Two Decisions by Germany’s Supreme Court	71
--	----

*Subject Matters:*

- (1) Can the Russian State’s claims against the German State or a German company be attached to secure payment of a German private individual’s award against Russia?
- (2) Does an arbitration clause in a bilateral investment treaty constitute a waiver by the State of its immunity from enforcement of the award?

---

<i>Observations by Hilmar Raeschke-Kessler</i>	96
--	----

## COURT DECISIONS ON ARBITRATION

### *Canada*

Judgment of the Court of Appeal of Québec rendered on May 30, 2005 in case [2005] R.J.Q. 1448 (on appeal before the Supreme Court of Canada)	101
--	-----

#### *Subject Matter:*

Whether an arbitration clause found in a consumer contract concluded on the internet can affect the jurisdiction of Québec courts over a class action.

---

#### *Observations by Frédéric Bachand*

114

### *England*

Decision by High Court of Justice, Queens's Bench Division, Commercial Court, rendered in 2005 in case No. 2004/536	125
---	-----

#### *Subject Matter:*

Whether an arbitral award against a state, rendered in ICSID arbitration pursuant to a Bilateral Investment Treaty, may be enforced by obtaining from an English court so-called Third Party Debt and Charging Orders against certain cash and securities held in London by third parties pursuant to a an agreement between these third parties and the central bank of the state in question.

Questions of state immunity from enforcement pursuant to the State Immunity Act of 1978.

---

#### *Observations by Judith Gill*

142

### *France*

Decision by the French Cour de Cassation, First Civil Chamber rendered on 6 December 2005 in case 1660 FS-P+B	149
---	-----

#### *Subject Matter:*

Liability of arbitrators who have failed to render an award before the deadline for the arbitral proceedings.

---

#### *Observations by Louis Degos*

151

**TABLE OF CONTENTS**

iii

***Switzerland***

Judgments by the Swiss Supreme Court rendered on 10 November 2005 in (1) case 4P.98/2005/svc and (2) CASE 4P.154/2005/svc (The “Republic of Lebanon v. FTMI & FTML” Cases)	159
---	-----

***Subject Matter:***

- (1) Validity of an exclusion agreement (excluding applications  
to courts to set aside an award). Effects of a partial  
exclusion agreement, namely the waiver to challenge  
an award due to lack of competence.
- (2) Effects of an exclusion agreement on correction awards.

---

<i>Observations by Laurent Lévy</i>	181
-------------------------------------	-----

***USA***

Decision by the Supreme Court of the United States rendered on 21 February 2006 in case no. 04-1264 (Buckeye Check Cashing, Inc. v. Cardegnà <i>et al.</i> )	193
--	-----

---

**DOCUMENTS**

---

ICSID Amended Rules and Regulations	201
-------------------------------------	-----

**NOTES & INFORMATION**

New Amendments to ICSID’S Arbitration Rules – Mark Kantor	213
Recognition and Enforcement of Foreign Arbitral Awards in Brazil: Recent Developments – Katherine Spyrides	219
L’Arbitrage aux Jeux Olympiques d’Hiver de Turin 2006 – Mathieu Maisonneuve	225
CONFERENCE REPORT: Arbitration as One of the Means of Resolution of Disputes (Lyon, France, 18 November 2005) – Grégory Levy	233
CONFERENCE REPORT: International Investment Law at a Crossroads (Harvard Law School, USA, 3 March 2006) – Laurie Achoutk, Rostislav Pekar, Sabina Sacco & Jorge Viñuales	239

iv STOCKHOLM INTERNATIONAL ARBITRATION REVIEW 2006:1

CONFERENCE REPORT: Arbitration in Investment Disputes, <i>Petersberger Schiedstage</i> 2006 (Königswinter, Germany, 3 and 4 March 2006) – Jan K. Schaefer	253
CONFERENCE REPORT: Where Is the Law of the Investment Going? (Tunis, 3 and 4 March 2006) – Rym Ben Khelifa	259
New International Board of the SCC Institute – Sara Adolfsson	265
Recent Ratification of the 1965 Washington Convention (ICSID)	267
The 1958 New York Convention, List of Contracting States	269
BOOK REVIEW – Lawrence W. Newman <i>Leading Arbitrators' Guide to International Arbitration</i>	275
BOOK REVIEW – Tobias Zuberbühler, Christoph Müller, Philipp Habegger, eds. <i>Swiss Rules of International Arbitration: Commentary</i>	287