

## President's Message

### The Revised Swiss *Lex Arbitri*: A Story of Two Dozen Jewels

Five years ago, my predecessor Elliott Geisinger sent a young woman on a perilous journey with the Cup Of The Nineteen Jewels.<sup>1</sup> Later, in 2017, he reported on her progress over the mountains and through the streams, noting that the story would be resumed in good time, for her journey was far from over.<sup>2</sup>

Today, that journey is over and it is time to tell the last part of the story. And, it is a good story to tell. Once upon a time, in 2008 to be exact, the Swiss Parliament was first invited to address international arbitration. It was about a minor issue and that issue was soon forgotten, but the topic of international arbitration remained on the agenda and it spawned extensive discussions about the state of the 19 articles of Chapter 12 of the Swiss Private International Law Act, the Swiss *lex arbitri*. There was agreement that Chapter 12 was still very modern and perfectly fit for purpose despite harking back to the 1980s and that Chapter 12 did not *need* to be revised. There was, however, also agreement that a law from the 1980s could do with a little brush-up. In 2013, ASA suggested a “*toilettage*”: a “*gentle revision*”, “*as much as necessary and as little as possible*”.<sup>3</sup> In his President's Messages, Geisinger called it a “*polishing*” of the jewels.

The journey through a legislative landscape is never without its perils. Would the Swiss authorities pursue the extremely arbitration-friendly stance of their predecessors more than 30 years ago? The Federal Office of Justice was tasked to prepare a bill and did so with the utmost benevolence for international arbitration, taking advice from various stakeholders along the way. And, so did the members of Parliament, who proved to be immune to anti-arbitration agitations just north of the border and in the European Union as such. On June 19, 2020, the two Chambers of the Swiss Parliament unanimously adopted the revised Chapter 12.

The revised Swiss *lex arbitri* will enter into force on January 1, 2021. If on that day you still have a bit of champagne left from New Year's Eve, use it for a toast to the polished jewels and welcome five more jewels to the

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<sup>1</sup> Elliott Geisinger, President's Message: *The Cup Of The Nineteen Jewels*, 33 ASA Bulletin 1/2015, 1 *et seqq.*

<sup>2</sup> Elliott Geisinger, President's Message: *The Cup Of The Nineteen Jewels – The Journey Continues*, 35 ASA Bulletin 3/2015, 523 *et seqq.*

<sup>3</sup> ASA Report to the Federal Office of Justice, May 6, 2013 (unpublished, translation from German by the author).

world of arbitration: The original Nineteen Jewels become the Tremendous Two Dozen.

There is indeed cause to celebrate. First, the Swiss Government and Parliament resoundingly and unanimously confirmed their pro-arbitration stance. For thirty years, Switzerland was easily the most arbitration-friendly jurisdiction and it is set to remain so for many more years, again setting standards for international arbitration.

Second, the jewels are indeed polished. The *toilettage* made the Swiss *lex arbitri* easier to access for foreigners – most of the additional jewels were due to inclusion of well-established case law of the Federal Tribunal and the replacement of previous references to the Code of Civil Procedure.

The revision also added a few helpful provisions. It opens the door for arbitration clauses in unilateral documents such as last wills or statutes of legal entities. It further offers a jurisdictional safe haven in the event that the parties fail to provide for any seat and a state court is needed to assist in the constitution of the tribunal.

Another innovation proved more controversial. Switzerland is notoriously trying to cope with four national languages and the constituent parts of the country do not take lightly to anything that smacks of an attack to the precarious equilibrium. Therefore, adding English to the mix sounds like playing with fire. Undaunted, the Swiss Government proposed to allow parties to use English in arbitration-related submissions to the Federal Tribunal. After some back-and-forth, the Parliament unanimously concurred. It is a strong signal that Switzerland welcomes foreign parties and foreign counsel to resolve disputes in neutral and cosmopolitan Switzerland. It did so in the past and is doing so even more strongly today.

A toast to the Two Dozen Jewels!

FELIX DASSER