4A_386/2015[1]

Judgment of September 7, 2016

First Civil Law Court

Federal Judge Kiss (Mrs.), Presiding
Federal Judge Klett (Mrs.)
Federal Judge Kolly
Federal Judge Hohl (Mrs.)
Federal Judge Niquille (Mrs.)
Clerk of the Court: Mr. Carruzzo

X._____S.p.A,
Represented by Mr. Julien Perrin,
Petitioner

v.

Y._____B.V.,
Represented by Mr. Michael Kramer and Mr. Matthias Wiget,
Respondent

Facts:

A.
In the middle of the 2000s, the Italian law company X._____ S.p.A. (hereafter: X._____ or the Petitioner) and the Dutch law company Y._____ B.V. (hereafter: Y._____ or the Respondent), a subsidiary of Group Y._____, a German multinational, bound themselves by way of a contract to build and carry out the construction and installation of a boat lift in the harbor of Livorno in Italy.

[1] Translator's Note: Quote as X._____ *v.* Y._____, 4A_386/2015.
The decision was issued in French. The original text is available on the website of the Federal Tribunal, www.bger.ch.

During the final test, carried out on December 20, 2007, some cables of the lift broke, causing the platform to fall. A dispute arose between the Italian company and the Dutch company as to the financial consequences of the accident with each claiming that the other was responsible.

B.
In December 2011, Y._____, relied on the arbitration clause contained in the aforesaid contract and filed a request for arbitration against X._____ with the Secretariat of the Court of Arbitration of the International Chamber of Commerce (ICC) with a view to obtaining damages.

The Defendant submitted that the claim should be rejected.

On April 26, 2012, upon a proposal of the Swiss National Committee, the ICC Court of Arbitration appointed [name omitted], a lawyer in Zürich, as sole arbitrator (hereafter: the Arbitrator).

After investigating the matter, the Arbitrator issued his final award on April 23, 2015. Rejecting any liability of the Claimant – the Dutch company – to the Respondent – the Italian company – as to the December 20, 2007, accident, he ordered the latter to pay EUR 2'272'500 to the former, with interest.

C.
On August 4, 2015, X._____ filed a request for revision in which it invited the Federal Tribunal to annul the aforesaid award, to remove the Arbitrator, and to send the case back to a new arbitral tribunal to be constituted in accordance with the arbitration agreement and the ICC rules, or to send the case back to the court of arbitration of that institution after annulling the award so that it could take these two measures. In support of the request, the petition claims that Arbitrator [name omitted], a lawyer in the "A._____ law firm" – *i.e.* the stock corporation A._____ CH in Zürich, borne from the merger of two law firms, one in Zürich and the other in Geneva in 2014 – had signed on April 18, 2012, the usual statement of independence. It adds that it had no reason at the time or during the arbitration proceedings to question the impartiality or the independence of the Arbitrator. However, so it says, on July 8, 2015, one of the three lawyers assisting it during the arbitral proceedings discovered a press release dated December 5, 2014, by which the Dutch tax and law firm A._____ - under the caption, "Z._____ advised on e-mobility by A._____," informed the public that it had advised the German law company Z._____ GmbH (hereafter: Z._____) in Berlin, another company of Group Y._____, in the implementation of a project concerning a software application for portable phones for the drivers of electrical cars. According to the Petitioner, the connection between the law firm of A._____ and the company belonging to the same group as the Claimant in the arbitration would have justified a challenge, respectively an appeal against the award, if it had learned about it *pendente lite* or, at least, before the time to appeal expired. In its view therefore, revision should be ordered.

In its answer of October 14, 2015, Y._____ submits that the matter is not capable of revision or, if it is, that it should be rejected insofar as admissible. In substance, the Respondent denies that the circumstance alleged in support of the petition would have been invoked in a timely manner and, moreover, denies that it could have caused the Arbitrator's appointment to be irregular. The alleged lack of impartiality of

independence or an arbitrator could anyway not be grounds for revision of an arbitral award in its view but merely grounds for appeal within the meaning of Art. 190(2)(a) PILA.[2]

The Arbitrator too submits that the matter is incapable of revision or that the petition should be rejected in its answer of October 23, 2015. In his view, besides being filed late, the aforesaid petition cannot succeed. Indeed, A._____ is not an integrated law firm, wherein the members would share fees, but a mere network of independent law firms. Therefore, the circumstance alleged by the Petitioner, which he assured the Court he was entirely unaware of, was not such – in his view – as to justify a challenge and cannot therefore justify upholding the request for revision.

On November 16, 2015, the Petitioner filed a reply in which it confirmed its submissions as to the request for revision.

On December 3, 2015, both the Respondent and the Arbitrator submitted a rejoinder in which they repeated their initial submissions.

Reasons:

1.

1.1. According to Art. 54(1) of the Law on the Federal Tribunal of June 17, 2005 (LTF[3]; RS 173.110), which came into force on January 1, 2007, the Federal Tribunal issues its judgment in an official language,[4] as a rule in the language of the decision under appeal. When the decision is in another language (here, English) the Federal Tribunal uses the official language chosen by the parties. Before the Arbitral Tribunal, they used English. In its briefs submitted to the Federal Tribunal, the Petitioner used French and the Respondent German, thus complying with Art. 42(1) LTF, in connection with Art. 70(1) CST.[5] In accordance with its practice, the Federal Tribunal shall consequently issue its judgment in French.

2.

2.1. Any law of procedure states a time from which judicial decisions are final, whether they are issued by state tribunals or private tribunals. Essentially, there always comes a time when material truth, insofar as it may be established, must give way to judicial truth, imperfect as it may be, under penalty of jeopardizing certainty as to the law. Yet, there are some extreme situations in which the notions of justice and fairness

[2] Translator's Note: PILA is the most commonly used English abbreviation for the Federal Statute on International Private Law of December 18, 1987, RS 291.
[3] Translator's Note: LTF is the French abbreviation of the Federal Statute of June 17, 2005, organizing the Federal Tribunal, RS 173. 110.
[4] Translator's Note: The official languages of Switzerland are German, French, and Italian.
[5] Translator's Note: CST is the French abbreviation for the Swiss Federal Constitution.

absolutely require that an enforceable decision may not survive because it is based on flawed premises. It is precisely the role of revision to afford a remedy (ATF 127 III 496 at 3b/bb, p. 501; see also among others: Rigozzi and Schöll, *Die Revision von Schiedssprüchen nach dem 12 Kapital des IPRG*, 2002, p. 4 *f.*; Walther J Habscheid, *Rechtsstaatliche Aspekte des internationalen Schiedsverfahrens mit Rechtsmittelverzicht nach dem IPR-Gesetz*, 1988, p. 16). The Private International Law Statute of December 18, 1987 (PILA; RS 291), contains no provision as to the revision of arbitral awards within the meaning of Art. 176 *ff*. PILA. Relying upon principles similar to the one recalled above, the Federal Tribunal supplemented this lacuna through case law (ATF 118 II 199 at 2). The grounds for revision of these awards were the ones stated at Art. 137 of the Federal Law Organizing Courts of December 16, 1943, (OJ), abrogated by Art. 131(1) LTF. They are now contained in Art. 123 LTF. The Federal Tribunal is the judicial body having jurisdiction to address the request for revision of any international arbitral award, whether final, partial, or interlocutory. When it upholds a request for revision, it does not decide the case on the merits but sends the matter back to the arbitral tribunal that decided in the first place or to a new arbitral tribunal to be constituted (ATF 134 III 286[6] at 2 and references).

2.2. The request for revision submitted to this Court does not completely fall within this framework. Indeed, its author claims the discovery of a circumstance which, in its view, would have seriously questioned the independence of the Arbitrator who issued the award, which is the subject of the request. Therefore, it considers it is entitled to invoke, with regard to the aforesaid circumstance, both the specific ground for revision contained in the law (Art. 121(a) LTF; previously Art. 136(a) OJ) and the more general one arising from Art. 123(2)(a) LTF (previously Art. 137(b) OJ). Consequently, the admissibility of the request for revision, which the Respondent challenges, is questionable. Admittedly, it is not the compliance with the time limit within which such a request must be submitted which is involved here, because the Petitioner acted within both the 30 day time limit after the discovery of the ground for challenge on July 8, 2015, (Art. 124(1)(a) LTF) and within the 90 days following the discovery, on the same date, of the ground for revision within the meaning of Art. 123(2)(a) LTF (Art. 124(1)(d) LTF), the suspension of the time limits during the summer recess being taken into account (Art. 46(1)(b) LTF: see judgment 4A_222/2011[7] of August 22, 2011, at 2.2. *i.f.*). However, the very admissibility of the ground for revision it invokes raises an issue here.

In two decisions issued in 2008, the Federal Tribunal found that a ground comparable to the one at issue here came within both of those anticipated by Art. 121(a) LTF (discovery of a ground for challenge) and Art. 123(2)(a) LTF (discovery of a pertinent new fact), and wondered whether the case law adopted under the aegis of the Federal Law Organizing the Courts should be maintained, according to which, a request for revision may not be based on circumstances which could be invoked in the framework of an appeal based on Art. 190(2) PILA (ATF 129 III 727[8] at 1, p. 729 and references), or if it would not be better to open the

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[6] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/request-for-revision-of-an-arbitral-award

[7] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/dismissal-of-an-untimely-request-for-the-revision-of-an-arbitral

[8] Translator's Note: The English translation of this decision is available here:

opportunity of revision when the ground for revision was discovered only after the time limit to appeal expired (judgment 4A_528/2007[9] of April 4, 2008, at 2.5; judgment 4A_234/2008[10] of August 14, 2008, at 2.1). However, this Court left the issue open.

2.3.

2.3.1. Case law under the aegis of the OJ held that the *a posteriori* discovery of a violation of the rules concerning the composition of the arbitral tribunal (Art. 136(a) OJ by analogy), such as the participation in the proceedings of an arbitrator who should have recused himself, did not constitute ground for revision of an award issued in an international arbitration unless a case of corruption of the arbitrator involved would be established. Indeed, at the time, revision for "procedural deficiencies" as stated at Art. 136 OJ, was instituted by way of an appeal seeking annulment, in other words, as pseudo-revision (on this concept, see ATF 113 IA 62 at 3(c), in the absence of legal recourse allowing for the sanction of a procedural deficiency impacting a judgment of the Federal Tribunal, irrespective of the recourse to the ECHR court for violation of the ECHR; RS 0.101). However, since the right to invoke this ground for revision depended at the time on compliance with a 30-day time limit from receiving the written communication of the judgment (Art. 141(1)(a) OJ), and that it could not be exercised if the procedural deficiency was discovered after the time limit expired, the arbitral awards were handled in the same manner as federal judgments in this respect since they could be repealed within the same time limit (Art. 89(1) OJ by reference from Art. 191(1) PILA [RO 1988 1822]) by way of a public law appeal to the Federal Tribunal (Art. 85(c) OJ). This is the reason for which the Federal Tribunal held that there was no lacuna to be supplemented in this respect (ATF 118 II 199 at 4; judgment 4P.104/1993 of November 25, 1993, at 2 and references).

The situation is no longer the same *de lege lata* because Art. 124(1) LTF concerning the time limit within which the request for revision must be filed draws a distinction depending upon the object of the alleged violation: if the provisions as to challenges are involved, the time limit is 30 days from the discovery of the ground for challenge (litt. a) whilst for the other procedural rules it is 30 days from the notification of the full text of the judgment (litt. b). Under the present law, it is therefore no longer possible to draw an argument from the fact that the party that is considered to be harmed by a judgment of the Federal Tribunal or an international arbitral award disregarding the provisions as to challenges should file a request for revision or file a public law appeal respectively, against such decisions within a time limit identical for the two legal recourses. This is the finding that led the First Civil Law Court to wonder in the aforesaid judgment 4A_528/2007[11] (at 2.4) whether the case law issued under the aegis of the OJ would remain applicable under the LTF whilst leaving the issue open.

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http://www.swissarbitrationdecisions.com/extension-arbitration-clause-non-signatory

[9] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/arbitrators-independence-not-affected-by-his-membership-of-a-spe

[10] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/renunciation-to-appeal-revision-of-award-within-time-limit-to-ap

[11] Translator's Note: The English translation of this decision is available here:

2.3.2. Legal commentators are divided as to how this question should be answered; and the further hypothesis of a crime committed by the arbitrator – which is not at issue herein – remains reserved.

Some scholars deny to a party in an arbitral proceeding the right to argue by means of revision a ground for challenge which it discovered only after the time limit to appeal the award expired. According to Bernhard Berger and Franz Kellerhals in particular, since the federal legislature deliberately waived the introduction of a provision as singular as Art. 121(a) LTF into Art. 396 of the December 19, 2008, Code of Civil Procedure (CPC; RS 272) concerning revision of awards in domestic arbitration, and also because the faculty reserved by the latter provision did not exist under the aegis of the Arbitration Concordat of March 27, 1969 (AC), nothing justifies being more generous in international arbitration. Art. 77 LTF indeed merely took over the OJ solution according to these two writers; yet, that law did not provide such a remedy. Moreover, the "pertinent facts" envisaged at Art. 123(2)(a) LTF would concern only the factual findings on which relies the arbitral award, the revision of which is requested, to the exclusion of a factual circumstance which could constitute ground for challenge (Berger and Kellerhals, *International and Domestic Arbitration in Switzerland*, 3rd ed. 2015, n. 1932, 1953-1956 and p. 682, n. 13; see also Stefanie Pfisterer, *Commentaire bâlois*, Internationales Privatrecht, 3rd ed. 2013, n. 95 ad Art. 190 PILA; Tarkan Göksu, *Schiedsgerichtsbarkeit*, 2014, n. 1001 *i.f.* and 2254; Christoph Müller, *Das Schweizerische Bundesgericht revidiert zum ersten Mal einen internationalen Schiedsspruch: eine Analyse im Lichte des neuen Bundesgerichtsgesetzes*, Schieds VZ 2007, p. 64 *ff*, 67).

Shortly before PILA came into force on June 1, 1989, and before the Federal Tribunal issued the judgment published at ATF 118 II 199, three authors already suggested that revision of international arbitral awards should be permitted by applying Art. 136 and 137 OJ by analogy, as a real lacuna should be remedied (Lalive, Poudret and Reymond, *Le droit de l'arbitrage interne et international en Suisse*, 1989, n. 5 ad Art. 191 PILA, p. 444). One of them and another writer eventually criticized the aforesaid judgment 4P.104/1993, considering that even in the absence of a crime of corruption, it would be unjust to deprive a party of any opportunity to avail itself of concealed links between a party and its opponent subsequently brought to light. In their view, applying Art. 121(a) LTF by analogy should not be absolutely excluded in such a case, particularly when there was denial or deceptive silence (Poudret and Besson, *Comparative Law of International Arbitration*, 2nd ed. 2007, n. 845, p. 789 [=n. 845, p. 837, of the 1st ed. of 2002 in French]). The majority of legal writers follow this, albeit with various motivations, in particular as to whether or not the ground for revision arising from the subsequent discovery of ground for challenge should be related *per analogiam* to Art. 121(a) LTF (Marco Stacher, *Einführung in die internationale Schiedsgerichtsbarkeit der Schweiz*, 2015, n. 478 and n. 1202; Christian Luczak, *Beschwerde gegen Schiedsentscheide*, Prozessieren vor Bundesgericht, 4th ed. 2014, n. 6.100, p. 351; Geisinger and Mauzuranic, *Challenge and Revision of the Award*, International Arbitration in Switzerland, Geisinger and Voser (editors), 2nd ed. 2013, p. 223 *ff*, 262 *i.f.*; Voser and George, *Revision of Arbitral Awards*, Post Award Issues, Tercier (editor), 2011, p. 43 *ff*, 61/62;

http://www.swissarbitrationdecisions.com/arbitrators-independence-not-affected-by-his-membership-of-a-spe

Matthias Leemann, *Challenging international awards in Switzerland on the ground of a lack of independence and impartiality of an arbitrator*, Bulletin de l'Association Suisse de l'Arbitrage (ASA) 2011, p. 10 *ff*, 31) or to Art. 123(2)(a) LTF (Kaufmann-Kohler and Rigozzi, *International Arbitration*, 2015, n. 8.214 and n. 562; Girsberger and Voser, *International Arbitration*, 3rd ed. 2016, n. 1663, p. 427; Andreas Bucher, Commentaire romand, *Loi sur le droit international privé* – Convention de Lugano, 2011, n. 69 ad Art. 191 PILA).

In domestic arbitration, legal writing does not answer the question in dispute uniformly. For certain writers, the discovery after the time limit expired of a reason to challenge should be invoked by way of a request for revision based on Art. 396(1)(a) CPC[12] (discovery of pertinent facts afterwards), due to the absence of a provision in the aforesaid law comparable to Art. 121(a) LTF (see among others Michael Mráz, Commentaire bâlois, *Schweizerische Zivilprozessordnung*, 2nd ed. 2013, n. 21 ad Art. 396 CPC). Other legal writers, however, rejected the idea that such a discovery could justify challenging an enforceable arbitral award (Berger and Kellerhals, *op. cit.*, n. 1956, p. 690), or at least that Art. 396(1)(a) CPC may be ground for a request of revision based on such discovery (Markus Schott, Kommentar zur Schweizerischen Zivilprozessordnung (ZPO), Sutter-Somm, Hasenböhler and Leuenberger [editors], 3rd ed. 2016, n. 11 ad Art. 396 CPC; Kramer and Wiget, in ZPO Schweizerische Zivilprozessordnung, Kommentar, Brunner, Gasser und Schwander [editors], 2nd ed. 2016, n. 5 ad Art. 396 CPC and p. 2890, n. 16; Felix Dasser, KUKO ZPO, Oberhammer, Domej and Haas [editors], 2nd ed. 2014, n. 10 ad Art. 396 CPC).

2.3.3. Comparative law is not very helpful in resolving the issue in dispute. It shows at best that certain countries such as England, Germany, and Italy do not provide for revision against awards issued in an international arbitration whilst the countries which chose the opposite solution such as France, Belgium and the Netherlands do not all allow for revision under the same conditions (Poudret and Besson, *op. cit.* n. 843 – 847; Laurent Hirsch*, Révision d'une sentence arbitrale 12 ans après*, Jusletter of January 4, 2010, n. 51-61).

2.3.4. The parties to a dispute are free to remove certain disputes from their ordinary jurisdictions that may arise from the performance of a contract. When entering into an arbitration agreement, they voluntarily waive some of the rights guaranteed by the ECHR. Such waivers do not violate the convention as long as it is free, lawful, and unequivocal. Moreover, the waiver of certain rights afforded by the ECHR must come with a minimum of guarantees corresponding to its gravity (*see* judgment of the ECHR *Tabane v. Switzerland* of March 1, 2016, §27 and references). Whoever waives in advance the constitutional right (Art. 30(1) CST[13] for Switzerland) and under the treaty (Art. 6(1) ECHR) to have one's case heard by a court established by law (see ATF 128 III 50 at 2c/aa p. 58 and the writers quoted) by entering into an arbitration agreement, may therefore reasonably expect that the members of the tribunal or the sole arbitrator present sufficient guarantees of independence and impartiality. He must accordingly be given the means to act, should his expectations in this regard be frustrated, if he did not have the opportunity to rectify the situation *pendent lite*. It is only under this condition that he may be faced with an award that he will not really be able to appeal on

[12] Translator's Note: CPC is the French abbreviation for the Swiss Code of Federal Civil Procedure.
[13] Translator's Note: CST is the French abbreviation for the Swiss Federal Constitution.

the merits, except under the very restrictive angle of its incompatibility with substantive public policy within the meaning of Art. 190(2)(e) PILA (ATF 139 III 511[14] at 4, p. 514). The civil law appeal instituted by Art. 77(1)(a) LTF in connection with Art. 191 PILA is one such means, as it allows the aggrieved party to challenge the award when the sole arbitrator was irregularly appointed or the arbitral tribunal irregularly composed (Art. 190(2)(a) PILA). However, since its admissibility depends upon compliance with a peremptory time limit of 30 days from the notification of the full award (see Art. 100(1) LTF in connection with Art. 77(2) LTF *a contrario*). It serves no purpose for the party discovering the ground for challenge falling within Art. 190(2)(a) PILA only after the time limit expired. The party losing before a sole arbitrator or an arbitral tribunal failing to meet the requirements of independence and impartiality whilst becoming aware of it only after the aforesaid time limit expired, may doubtlessly raise this procedural deficiency at the enforcement stage of the arbitral award by invoking one of the grounds to refuse recognition and enforcement listed at Art. V of the New York Convention of June 10, 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (RS 0.277.12; hereafter: NYC). Thus, the deficiency at issue would certainly fall within Art. 5(2)(b) NYC (Borris and Hennecke, New York Convention, Wolff (editor), 2012, n. 293 ad Art. V NYC; Reinmar Wolff, last *op. cit.*, n. 530 ad Art. V NYC), at least from the point of view of Swiss public policy (judgment 4A_374/2014[15] of February 26, 2015, at 4.2.2; judgment 4A_233/2010[16] of July 28, 2010, at 3.2.1). Yet, the party would have to discover the deficiency impacting the award before the enforcement proceedings were closed and the country in which enforcement would be sought would have to consider such a deficiency contrary to its public policy, and moreover, the refusal to enforce the award would let it survive and prevent the initiation of a new arbitration (Müller, *op. cit.*, p. 70). This would also leave aside cases such as a disciplinary sanction against a sports person, which would not require any enforcement (ATF 133 III 235 at 4.3.2.2, p. 244). Moreover, since the seat of the arbitral tribunal issuing the deficient award would necessarily be in Switzerland (Art. 176(1) LTF), the New York Convention, which applies only to "foreign arbitral awards," would not be applicable – the exception contained at Art. 192(2) PILA being reserved – should the award be enforced in this country (Art. 194 PILA and Art. 81(3) of the Federal Law on Debt Collection and Bankruptcy of April 11, 1889 [LP: RS 281.1]) and the enforcement, which would then take place according to Art. 335 *ff* CPC, and to the provisions of the LP[17] (Art. 335(2) CPC), would not allow the succumbing party to oppose it by raising a ground for challenge it would have missed (see Art. 341(3) CPC and Art. 81(1) LP: Berger and Kellerhals, *op. cit.* n. 2006 *ff*). The solution consisting of asking the aggrieved party to act at the enforcement stage of the award is therefore no panacea. Therefore, revision of the award appears to be the only effective remedy in such a situation.

[14] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/arbitral-tribunal-irregularly-composed-if-requirements-arbitration-clause-are-not-met

[15] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/public-policy-defense-under-new-york-convention

[16] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/issues-of-lack-of-independence-raised-against-enforcement-of-awa

[17] Translator's Note: LP is the French abbreviation for the aforesaid law of April 11, 1889.

More broadly speaking, it must be recalled that the federal legislature attaches importance to compliance with the guarantee of an independent and impartial tribunal as contained at Art. 30(1) CST and 6(1) ECHR, because that guarantee is one of the pillars of any state ruled by law. Evidence of this is that it would not tolerate that some ground for challenge discovered after the federal proceedings were closed would remain without consequence, but, to the contrary, made the provisions on revisions of judgments of the Federal Tribunal applicable in such a case (Art. 38(3) LTF, making applicable Art. 121(a), second hypothesis, LTF; or before the ECHR was entered into, Art. 28(1) OJ which referred to Art. 136(a) OJ *i.f.*). Moreover, the legislature generalized the regulation heretofore reserved to the Federal Tribunal as an appeal body or as sole court (see the reference at Art. 1(2) of the Federal Law of Civil Procedure of December 4, 1947 [FCP; RS 273], to chapter 2 LTF), by extending it to the entire field of civil procedure when Art. 122(1) CST, came in to force on January 1, 2007, gave it the power to legislate in this domain. Thus, Art. 51(3) CPC, quoting verbatim Art. 38(3) LTF, provides that if a ground for challenge is discovered only after the proceedings were closed, the provisions as to revision are applicable. Admittedly, the provisions of the CPC concerning revision (Art. 328 *ff*), contrary to Art. 121(a), second sentence LTF, did not take into account specifically the particular ground provided by Art. 51(3) CPC (Denis Tappy, *CPC Code de procedure civile commenté*, 2011, n. 18 ad Art. 51 CPC, which sees there probably a case for revision according to Art. 328(1)(a) CPC concerning the discovery of new facts). The same remark may be made, moreover, with regard to the provisions governing domestic arbitration (Art. 353 *ff* CPC), which contain no explicit rule comparable to Art. 51(3) CPC concerning recusal (Art. 367 to 369 CPC), and do not either specifically refer, with regard to the grounds of revision stated at Art 396 CPC, to the circumstance understood by the general rule mentioned above. However, it is reasonable to wonder whether this is not mere oversight. Indeed, in its Message of June 28, 2006, concerning the Swiss Civil Code of Procedure (FF 2006 6841 *ff*), the Federal Council[18] emphasized with regard to Art. 49(3) of the draft law, which became Art. 51(3) CPC, that a ground for recusal discovered after the decision came into force is ground for revision (n. 5.2.3, p. 6888). However, when addressing the grounds for revision further down, it states that the draft essentially limits itself to the usual grounds of revision (a crime-influenced decision, new evidence or facts discovered subsequently) because procedural deficiencies must be challenged by way of the principal legal remedies (appeal and recourse). The drafter of the message therefore appears to have forgotten the existence of the ground for revision specifically described by Art. 49(3) of the draft, resulting from the discovery of a ground for recusal after the time limit to appeal expired or, to the contrary, had assumed without saying so expressly, that this specific ground for revision is encompassed by letter (a) of the first paragraph of Art. 326 of the draft, which became Art. 328 CPC. Be this as it may, the point is to take note that when the federal legislature adopted the aforesaid provisions of the draft without changes, the discovery after the fact of a ground for recusal was of such importance that it justified making such discovery into a specific ground for revision.

As to awards issued in domestic arbitration, the Message shows that the grounds which may justify revision of such awards correspond to the ones that may be invoked before a state court (n. 5.25.8, p. 7012). The grounds for revision of Art. 394 of the draft, which became Art. 396 CPC, are moreover copied from those of Art. 326, *i.e.*, the present Art. 328 CPC; they even include revision for violation of the ECHR, which is

[18] Translator's Note: The Federal Council is the executive power of the Federal Government of Switzerland.

disputable at the very least, to the extent that an arbitral award is not as such subject to the European Court of Human Rights (Philippe Schweizer, *CPC Code de procédure civile commenté*, 2011, n. 21 ad Art. 396 CPC; Berger and Kellerhals, *op. cit.*, n. 1934), but which nonetheless demonstrates the importance that the federal legislature attaches to compliance with the guarantees contained in that treaty, even in the field of arbitration. The similarity between state's decisions and domestic arbitral awards as to the grounds for revision is *a priori* reason enough to justify applying Art. 51(3) CPC to both types of decision. Neither does one see why the opposite solution should be adopted as to an award issued in an international arbitration. Indeed, when compliance with the essential guarantee of independence and impartiality of all members of an arbitral tribunal is at issue, it would hardly be defensible to turn away the party that would raise a violation of this guarantee, simply because its opponent had neither its domicile or its habitual residence in Switzerland at the time the arbitration agreement was entered into (see Art. 176(1) PILA). Moreover, even if it is true that the solutions adopted in domestic arbitration do not necessarily apply to international arbitration and *vice versa*, (ATF 141 III 444 at 2.2.4.2, p. 456; 138 III 270[19] at 2.2.2, p. 275), it is hardly practicable to have different solutions for the two types of arbitration as to a guarantee as important as the one at issue here.

In support of its submission that the matter is not capable of revision, the Respondent mainly invokes the *travaux préparatoires* concerning the LTF and, more specifically, the inference drawn by Berger and Kellerhals (*op. cit*, n. 1956, 1st paragraph, and p. 589, n. 38). In short, according to these writers, the federal legislature, when adopting Art. 77 LTF, expressed the desire to leave the provisions of the OJ concerning the challenge of arbitral awards untouched; at the time it did not even examine the issue of their revision. Therefore, it would not behoove judicial bodies to substitute their will for that of the legislative branch. However, the evidence on which the conclusion of these two writers is based is not very solid. It actually relies on only on two short passages of the Message of the Federal Council of February 28, 2001, concerning the entire revision of the organization of federal courts in which it is pointed out, *grosso modo*, that the direct appeal to the Federal Tribunal contained in Art. 191 PILA is a legal remedy left unchanged as only the reference to the public law appeal was substituted (FF 2001 4202 *ff*, 4312 and 4337 [German versions], respectively FF 2001 4000 *ff*, 4110 and 4135 [French versions]). One must confess that it appears difficult to assume the firm will of the federal legislature to exclude the revision of international arbitral awards for breach of the provisions concerning recusal on the basis of this mere remark in a message issued by the executive branch and consequently, to turn into qualified silence the absence of this ground for revision in the LTF and/or at Art. 191 PILA in its new wording. Taking this reasoning to the extreme, one may as well admit that the legislature, by its silence, intended to simply exclude any possibility of revision of international arbitral awards because such opportunities were not foreseen by the OJ but had been created *praeter legem* - by judge-made law. In fact, everything leads one to believe, as the two aforesaid writers appear to acknowledge, that the legislature did not bother with the issue at hand here, nor, more generally, with the revision of international arbitral awards when it dealt with the provisions of the LTF. Consequently, nothing would prevent the Federal Tribunal from filling the gap in that law or in the PILA again.

[19] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/an-international-arbitral-tribunal-seating-in-switzerland-is-gen

2.3.5. The aforesaid review would call for the necessity to admit that discovery of a ground that would have required the recusal of the sole arbitrator or of one of the members of the arbitral tribunal after the time limit to appeal an international arbitral award expired may lead to the submission of a request for revision of the aforesaid award to the Federal Tribunal, provided that the Petitioner could not have discovered the ground for recusal during the arbitral proceedings by paying the attention required under the circumstances.

However, the request for revision before this Court shall, in any event, be rejected for the reasons stated hereafter (see at 3) and it does not appear appropriate to decide the issue in dispute definitively in this judgment. Indeed, a brushing up, if not a revision of Chapter 12 PILA, is being undertaken pursuant to the introduction on February 3, 2012, by the Legal Affairs Committee of the National Council of bill 12.3012 entitled: "*Private international law statute: Maintaining the attractivity of Switzerland as an international arbitration venue*", a bill that the National Council and the Council of States approved on June 1, and September 27, 2012, respectively, upon proposal of the Federal Council. The text of the bill emphasizes in particular the necessity to integrate certain essential elements of the case law of the Federal Tribunal issued since the entry in force of the PILA into the law, whilst correcting those that may need to be corrected. Thus, rather than supplementing a lacuna when there is no urgency to do so, it appears preferable to let the federal legislature, whose task it is, decide itself the issue of the grounds for revision of an international arbitral award, just as it is for the legislature to do so with other recurring problems such as the requirement (or lack thereof) for a minimum amount in dispute to be able to seize the Federal Tribunal. This way of working will moreover enable the federal legislature to either modify some other rules of the law presently in force or to adopt the new ones, for instance in the CPC and/or the LTF, so that a legal regime may be established that if not similar, is at least consistent with regard to revision of arbitral awards, whether they fall within international or domestic arbitration, thus reinforcing the certainty of the law in this field and establishing a clear legal situation for the judicial bodies called upon to address requests for revision, namely the Federal Tribunal in international arbitration (ATF 118 II 199 at 3) and the highest court of the canton in domestic arbitration (Art. 356(1)(a) CPC).

3.

3.1.
3.1.1. Like a state judge, an arbitrator must present sufficient guarantees of independence and impartiality. Failing to respect this rule leads to an irregular appointment pursuant to Art. 190(2)(a) PILA in international arbitration and Art. 393(a) CPC in domestic arbitration. In order to tell whether an arbitrator presents such guarantees, one must refer to the constitutional principles developed with regard to state courts whilst heeding the specificity of arbitration – in particular international arbitration – when examining the circumstances of the case at hand (ATF 136 III 605[20] at 3.2.1, p. 608 and the precedents quoted; judgment 4A_598/2014 of January 14, 2015, at 2.2.1).

[20] Translator's Note: The English translation of this decision is available here:

The guarantee of an independent and impartial tribunal arising from Art. 30(1) CST[21] makes it possible to demand the recusal of a judge whose situation or behavior is such as to cast doubt as to his impartiality. It seeks to avoid that outside circumstances may influence the judgment in favor of or to the detriment of a party. It does not impose recusal only when an actual bias of the judge is established because a disposition deep inside may hardly be proven; it is sufficient for the circumstances to give the appearance of bias and to suggest that the judge's activity may be biased. However, only some circumstances objectively found must be taken into consideration; purely personal impressions of one of the parties to the case are not decisive (ATF 140 III 221 at 4.1 and the cases quoted).

Subjective impartiality – which is presumed until proven the contrary – ensures that each case will be adjudicated without distinction of persons. Objective impartiality, for its part, seeks in particular to prevent instances where the magistrate would participate in various capacities in the same case and it guarantees the independence of the judge towards all parties (ATF 136 III 605[22] at 3.2.1, p. 609 and the cases quoted).

3.1.2. To verify the independence of the sole arbitrator or of the members of an arbitration panel, the parties may also refer to the IBA Guidelines on Conflicts of Interest in International Arbitration approved on May 22, 2004, and revised on October 23, 3014, (hereafter: the Guidelines, with reference to the latest version except when otherwise indicated, which is available at the following internet address: www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx; in this respect see, among others, Kaufmann-Kohler and Rigozzi, *op .cit.*, n. 4.129 *f.*; Berger and Kellerhals, *op. cit.*, n. 786 *f.*; Peter and Brunner, Commentaire bâlois, *Internationales Privatrecht*, 3rd ed., 2013, n. 16c ad Art. 180 PILA; Tschanz, Commentaire romand, *Loi sur le droit international privé* – Convention de Lugano, 2011, n. 9 ad Art. 180 PILA; Göksu, *op. cit.*, n. 978 *ff.*; Girsberger and Voser, *op. cit.*, n. 658 *ff*; Urs Weber-Stecher, Commentaire bâlois, *Schweizerische Zivilprovessordnung*, 2nd ed, 2013, ns. 40 *ff* ad Art 367 CPC; Gabriel and Buhr, Commentaire bernois, *Schweizerische Zivilprozessordnung*, vol III 2014, ns. 31-35 ad Art. 367 CPC; Voser and Petti, *The Revised Guidelines on Conflict of Interest in International Arbitration*, Bulletin ASA 2015, p. 6 *ff*; David A. Lawson, *Impartiality and Independence of International Arbitrators, Commentary on the 2004 IBA Guidelines on Conflicts of Interest in International Arbitration*, Bulletin ASA 2005, p. 22 *ff*; Daniel Cohen, *Indépendence des arbitres et conflicts d'intérêts*, Revue de l'arbitrage 2011, p. 611, *ff*, n. 56/57). The Guidelines, which could be compared to the ethics rules that assist in the interpretation and particularization of professional rules (ATF 140 III 6 at 3.1, p. 9; 136 III 296 at 2.1, p. 300), do not have the status of laws; however, they are a useful tool that can contribute to harmonizing and unifying the standards applied in international arbitration to settle conflicts of interest, whilst having a certain influence on the practice of arbitral institutions and courts. The Guidelines state some general principles. They also contain an enumeration, in

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http://www.swissarbitrationdecisions.com/independence-and-impartiality-of-a-party-appointed-arbitrator-in

[21] Translator's Note: CST is the French abbreviation for the Swiss Federal Constitution.

[22] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/independence-and-impartiality-of-a-party-appointed-arbitrator-in

the format of a non-exhaustive list of particular circumstances: a red list, divided in two parts (situations in which there is a legitimate doubt as to independence and impartiality and the parties cannot waive the most serious ones); an orange list (intermediary situations which must be disclosed but do not necessarily justify recusal); a green list (specific situations which do not objectively generate a conflict of interest and that the arbitrators are not bound to disclose). It goes without saying that despite the existence of such lists, the circumstances of the case at hand shall always remain decisive to decide the issue of the conflict of interest (judgment 4A_506/2007[23] of March 20, 2008, at 3.3.2.2; see also ATF 136 III 605[24] at 3.4.4, p. 621 and judgments 4A_110/2012[25] of October 9, 2012, at 2.2.1, 4A_458/2009[26] of June 10, 2010, at 3.3.1 and 4A_258/2009[27] of January 11, 2010, at 3.1.2).

3.2.

3.2.1. In support of its petition for revision, the Petitioner invokes a number of situations falling under the Guidelines which, in its view, should have led to the Arbitrator's recusal: *First*, the situation at 1.4 (non-waivable red list) in which an arbitrator or his firm regularly advises one party or its affiliated companies, with the arbitrator or the firm drawing substantial financial revenues therefrom; *second*, – a situation at 2.3.6 (waivable red list) – the fact that the arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties; *third*, the situation mentioned at 3.1.4 (orange list) that within the past three years, the arbitrator's law firm acted for or against one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator; *fourth*, the case mentioned at 3.2.1 (orange list), when the arbitrator's law firm is currently rendering services to one of the parties or to an affiliate of one of the parties, without creating a significant commercial relationship for the law firm and without the involvement of the arbitrator; *fifth*, the circumstance at 3.2.3 (orange list), namely that the arbitrator or his firm represents a party or an affiliate of one of the parties, yet without such representation concerning the matter in dispute.

Reviewing the circumstances of the case at hand in the light of these various possibilities, the Petitioner states that "the Arbitrator's law firm" indicated in its press release of December 5, 2014, that it advised Z._____, a company that is wholly controlled by Group Y._____, as is the Respondent. In its view, this assignment, carried out whilst the arbitration was pending, doubtlessly enabled the Arbitrator's law firm

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[23] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/application-of-iba-rules-to-assess-an-international-arbitrators-

[24] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/independence-and-impartiality-of-a-party-appointed-arbitrator-in

[25] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/grounds-challenge-arbitrator-must-be-raised-immediately-after-one-becomes-aware-them

[26] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/challenge-of-arbitrators-sitting-on-cas-panel-rejected-claim-of-

[27] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/invalid-waiver-of-the-appeal-to-the-federal-tribunal-through-ref

to draw some substantial revenues since he set to work a team composed of at least nine lawyers. This would therefore be a circumstance that should have led the Arbitrator to reduce himself *ex officio* pursuant to Art. 1.4 of the Guidelines or, at the very least, to inform the parties so that they could exercise their right to challenge him, according to Art. 2.3.6 and, in the alternative, to Art. 3.1.4, 3.2.1, and 3.2.3 of the same Guidelines. The Petitioner thus concludes that the Arbitrator, whose firm advised a company belonging to the same group as the Respondent during the arbitration, did not fulfill the minimum requirements of independence and impartiality that could be expected from him, which would justify upholding the request for revision, the annulment of the award, the recusal of the Arbitrator, and the appointment of another arbitrator to investigate the matter *ab ovo* and a new decision.

3.2.2. The Respondent and the Arbitrator challenge the Petitioner's statement, which is the cornerstone of its argument, according to which A._____ is an integrated law firm, all members of which share fees when, according to them, it instead is a mere network of independent law firms. Starting from there, they seek to demonstrate why, in their view, none of the provisions of the Guidelines invoked by the Petitioner would be applicable to the case at hand. In their view, the only situation which might be taken into consideration here would be Art. 4.2.1 of the Guidelines in which a firm in association or in alliance with the Arbitrator's law firm, but that does not share significant fees or other revenues with the former firm, renders services to one of the parties or an affiliate of one of the parties in a matter unrelated to the pending arbitration. Yet, this provision is on the green list, which sets forth the cases in which there is objectively no conflict of interest, whether actual or in appearance, and which the Arbitrator is not bound to disclose.

This would be the case here, so assuming that the matter is capable of revision, the petition should be rejected on the merits.

3.3.
3.3.1.
3.3.1.1. The growth in size of law firms is a reality of international arbitration that cannot be ignored. Indeed, when big law firms are established in several countries, they have many partners, each of whom is in charge of a number of clients and files of the firm (François-Xavier Train, *Mode d'exercice de l'activité et conflicts d'intérêts*, Revue de l'arbitrage 2012, p. 725 *ff*, 729). The International Bar Association took this into consideration when it issued General Standard 6(a), which requires the arbitrator, when considering whether certain facts or circumstances constitute a potential conflict of interest, to take into account the activities of the firm in which he practices. However, the same General Standard points out that equating the arbitrator to his firm does not necessarily imply a conflict of interest for the arbitrator, rather the circumstances of each specific case (the importance of the activities, their nature, the time they occurred, and the practice of the firm) remain decisive to decide the matter according to the Explanation to the aforesaid Standard.

On the basis of the evidence in the file of the federal proceedings, it must be determined whether the firms belonging to the A._____ network constitute a single entity or not; in other words, if it is correct to include them in the expression "the A._____ law firm" used by the Petitioner and to agree that the A._____ - CH and A._____-A firms are merely two elements of a single law firm.

3.3.1.2. On its various internet sites, A._____ undeniably emphasizes the connections between the firms belonging to its international network, obviously for advertising purposes, and the benefits to its potential clients, as did A._____-A in its press release of December 5, 2014. Thus, under the heading "About A._____," the following may be found:

> A._____ provides its clients with specialist legal and tax advice for business. Our 3'000 lawyers trained in project management work across the globe within specialized sector-based teams in order to achieve our clients' goals. Our teams work across 60 offices worldwide and provide practical advice based on our clients' needs when confronting difficult economic issues and a rapidly changing regulatory environment.

Law firms in a network are bound to collaborate in various ways, so that the indications given by the Petitioner in this respect in its reply (pp.7-9) contain nothing extraordinary. Moreover, the Arbitrator himself points out that the law firms belonging to A._____ network together in training programs, have a joint website, bring together into various practice groups the lawyers interested in this or that specific part of their professional activities, and the partners of the firms belonging to the A._____ network meet once a year during a three-day convention (answer n. 12).

This being so, the website also shows that "A._____ is a grouping of ten independent tax and law firms." This legal independence also appears financially as well, as there is no financial integration between the various law firms belonging to the network. Indeed, the certificates issued by the managing partners of the two law firms involved, mainly A._____-CH and A._____-A show that the law firms belonging to the network do not share fees except for one-off collaborations on a specific case.

Under such circumstances, and contrary to the Petitioner's claims, it cannot be argued that "the various lawyers practicing within A._____ must be considered as the members of one single law firm" (reply p. 8 *i.f.*). Such a view could be taken as to the lawyers in the Zürich and the Geneva offices of A._____-CH, as in the latter case, they are shareholders and/or employees of the same common stock company. Of course, depending on the circumstances, one cannot exclude the possibility of looking into the legal and financial independence of the various members of the same network in order to ascertain whether or not a lawyer practicing in such a firm offers sufficient guarantees of independence and impartiality to conduct an arbitration as sole arbitrator or member of an arbitral tribunal. However, the case at hand does not present any singular element that would justify departing from the general rule.

3.3.2. As the A._____-CH law firm in which Arbitrator [*name omitted*] works must be considered as one firm for the purposes of applying the guidelines and not as a mere member of a "A._____ law firm," which would constitute an eponymous legal entity bringing together a number of national or local law firms deprived of any autonomy, none of the paragraphs of the Guidelines invoked by the Petitioner (see 4.2.1 above) appears pertinent in the case at hand. Indeed, neither the Arbitrator nor his law firm, *i.e.* A._____-CH, ever advised the Respondent or its sister company Z._____; neither did they do so on a regular basis or draw any financial income therefrom, let alone any significant income (see Art. 1.4 of the Guidelines). It is

A._____-A which advised Z._____. Similarly, the Arbitrator's law firm had no significant commercial relationship with the Respondent or Z._____ (see Art. 2.3.6 of the Guidelines). The firm did not act for or against the Respondent or Z._____ during the last three years in a matter unrelated to the case in dispute and without the Arbitrator's involvement (Art. 3.1.4 of the Guidelines). The Arbitrator did not advise the Respondent or Z._____ in the circumstances mentioned at Art. 3.2.1 of the Guidelines. Finally, neither the Arbitrator nor his law firm represented one of the parties or an affiliate of one of the parties on a regular basis, the situation described at Art. 3.2.3 of the Guidelines.

If one were to seek at all costs an element in the Guidelines which would apply to A._____-A's intervention on behalf of Z._____ and the relationship between that intervention and the Arbitrator's law firm, one would have to turn to Art. 4.2.1 of the aforesaid Guidelines. This is part of the green list and applies indeed to the situation in which a firm in association or in alliance with the arbitrator's law firm, such as the aforesaid German law firm, renders services to an affiliate of one of the parties, among other beneficiaries – such as Z._____, the sister company of the Respondent – in a matter unrelated to the arbitration, as was the advice given to that company by A._____-A in connection with e-mobility. This, however, would not have justified a recusal of the Arbitrator at the time or subsequently the admission of a civil law appeal based on Art. 190(2)(a) PILA, nor would it lead to revision of the enforceable arbitral award today.

3.3.3. Irrespective of the Guidelines, and from the point of view of a reasonable third party aware of them, the circumstances of the case at hand, which are decisive, are not of such gravity that upholding the award as to which revision is sought would be incompatible with the notions of justice or fairness.

First, the Arbitrator's subjective impartiality is apparently not challenged and neither is it challengeable. Indeed, nothing indicates that Lawyer [name omitted], who was not appointed by the parties but by the ICC Court of Arbitration upon a proposal of the Swiss National Committee, was biased against the Petitioner during the proceedings. Moreover, if this had been the case, the Petitioner would not have failed to complain by way of a challenge or, as the case may be, by appealing the final award should it have revealed favorable treatment towards the Respondent. Furthermore, the Arbitrator states, without any evidence to the contrary, that at the time he was completely unaware of the existence of advice given to Z._____ by the law firm A._____-A. Therefore, he would have had no reason to show favor in the arbitration to the party affiliated to the German company which benefited from the advice of a German firm beyond belonging to the same network as the Swiss law firm, of which he was and still is a member.

As to objective impartiality, it must be noted that an author attempted to map out the issues that may arise in a worldwide law firm, depending on the degree of proximity of the arbitrator practicing in such a law firm with one of the parties, and he reached the conclusion that the hypothesis most remote from the arbitrator is when another office of the same firm has a client which is the mother or sister company or a subsidiary of a party to the arbitration (Thomas Clay, note sous l'arrêt de la Cour d'appel de Paris de 12 février 2009 dans la clause SA J&P Avax SA c. Socieété Tecnimont SPA, *Revue de l'arbitrage*, 2009, p. 190 *ff*, 198 s. n. 25). In the case at hand, the connection between the Arbitrator and the Respondent is even thinner than that to which the author refers because the German company which had a sister company of the Respondent

(A._____-A) as a client does not belong to the same firm as the Arbitrator (A._____-CH) but constitutes a legally and financially autonomous entity merely belonging to the same network as the Swiss law firm of which the Arbitrator is a member. In this context, the apparent absence of effective and ongoing relationships between the Respondent and Z._____ must also be emphasized. Indeed, besides being affiliates and constituting two of the 340 legal entities of Group Y._____, these two subsidiaries of the German multinational, whose decision-making bodies are not the same, have not much in common, whether as to their venue or the field of business in which they practice respectively. Hence, a hypothetically favorable treatment of the Respondent by the Arbitrator would have had no specific impact on the financial situation of its sister company.

Under such conditions, the Petitioner's request for revision cannot but be rejected, even assuming that the matter is capable of revision because the existence of the ground for revision invoked was not proved.

4.

The Petitioner fails and shall pay the judicial costs (Art. 66(1) LTF) and compensate the Respondent for the federal judicial proceedings (Art. 68(1) and (2) LTF).

Therefore, the Federal Tribunal pronounces:

1.
The request for revision is rejected insofar as the matter is capable of revision.

2.
The judicial costs set at CHF 15'000 shall be borne by the Petitioner.

3.
The Petitioner shall pay to the Respondent an amount of CHF 17'000 for the federal judicial proceedings.

4.
This judgment shall be communicated to the representatives of the parties and to the Sole Arbitrator.

Lausanne, September 7, 2016

In the name of the First Civil Law Court of the Swiss Federal Tribunal

Presiding Judge:	Clerk:
Kiss (Mrs.)	Carruzzo