Arbitration Procedures and Practice in Switzerland: Overview

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A Q&A guide to arbitration law and practice in Switzerland.

The country-specific Q&A guide provides a structured overview of the key practical issues concerning arbitration in this jurisdiction, including any mandatory provisions and default rules applicable under local law, confidentiality, local courts' willingness to assist arbitration, enforcement of awards, and the available remedies, both final and interim.

Legislative Framework

Applicable Legislation

1. What legislation applies to arbitration?

Principal Legislation

Principal legislation. The following principal legislation applies to arbitration in Switzerland:

- *Chapter 12* of the Federal Act of the Federal Assembly of the Swiss Confederation on Private International Law, 291 (PILA).
- By party election, *Part 3* of the Code of the Federal Assembly of the Swiss Confederation on Civil Procedure, 272 (Civil Procedure Code (CPC)), governing domestic arbitration.

Domestic or international. Generally, Chapter 12 of the PILA, governing international arbitration, applies to arbitral tribunals that have their seat in Switzerland if, at the time of conclusion of the arbitration agreement, at least one of the parties did not have its domicile, habitual residence, or seat in Switzerland. However, the parties can make a declaration in writing, or any other means of communication that can be evidenced in writing, that Part 3 of the CPC, governing domestic arbitration, applies. Equally, parties to a domestic arbitration can elect to apply Chapter 12 of the PILA, which emphasises party autonomy to a much larger extent than Part 3 of the CPC. This means that, in practice, international parties may be less likely to opt to apply Part 3 of the CPC.

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The provisions on arbitration in the PILA and in the CPC have many similarities, but also major differences. This Q&A generally limits discussion to the PILA (although indicating corresponding CPC provisions), unless specific reference to the CPC is necessary for a full understanding of the Swiss provisions.

UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law)

Switzerland has not adopted the UNCITRAL Model Law. Chapter 12 of the PILA is not based on the UNCITRAL Model Law, although there are no fundamental differences in substance between the two laws. The main difference is the degree of regulation. While the UNCITRAL Model Law contains a comprehensive set of provisions, the PILA only contains a few fundamental rules and the parties and arbitral tribunal are largely free to agree the procedural rules.

For further information, see *Practice note, Arbitration in Switzerland: Sources of Swiss arbitration law - International arbitration: Private International Law Act*.

Mandatory Legislative Provisions

2. Are there any mandatory legislative provisions? What is their effect?

The parties generally have broad freedom to agree the rules and procedure governing the arbitration. However, if the parties to an international arbitration seated in Switzerland do not choose to exclude the PILA's application in favour of the CPC, the following PILA provisions are mandatory:

- **Article 177(1) and (2).** This contains restrictions on state entities to invoke national law to contest arbitrability or capacity to be subject to arbitration.
- **Article 178(1).** This stipulates the form of the arbitration agreement.
- **Article 180(1)(c) and (2).** This relates to the challenge of arbitrators on justifiable grounds relating to independence, and restrictions on the appointing party's rights to challenge arbitrators.
- **Article 181.** This addresses pending actions (*lis pendens*).
- **Article 182(3).** This requires the equal treatment of the parties and protects their right to be heard.
- **Article 185.** This relates to state court assistance.
- **Article 186(1).** This provides that the parties cannot exclude the kompetenz-kompetenz principle. However, they can enhance it (for example, by excluding appeals, to the extent permitted).
- **Article 190(2).** This provides that the grounds for setting aside an arbitral award are exhaustive (although qualifying parties can waive an appeal on one or more of these grounds).

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3. Does the law prohibit any types of dispute from being resolved through arbitration?

Generally, any dispute of financial interest can be subject to arbitration (Article 177(1), PILA). Disputes in the following fields cannot be resolved through arbitration:

- Certain claims (attachment proceedings) under the *Debt Enforcement and Bankruptcy Act* (DEBA).
- Family law status matters (in particular marriage, paternity, adoption, divorce, and separation), although the financial consequences are arbitrable.

For further information, see *Practice note, Arbitrability in international arbitration*.

Under the CPC, any claim the parties can freely dispose of can be the object of an arbitration agreement (Article 354, CPC). Whether a dispute is arbitrable, depends on the substantive law applicable to the dispute. Therefore, the difference in the wording of Article 377(1) of the PILA and Article 354 of the CPC may result in certain disputes being not arbitrable if the CPC is applicable.

Limitation

4. Does the law of limitation apply to arbitration proceedings?

The Swiss law of limitation applies to claims brought in arbitration proceedings if Swiss law is the applicable substantive law.

The length of the limitation period is generally ten years (Article 127, Swiss Code of Obligations). This period may vary depending on the circumstances of the case (for example, five years for claims which by their nature require quick settlement, three years for tort claims, and three years for claims based on unjust enrichment). The limitation period starts running when the debt is due.

The limitation period is interrupted when either:

- The debtor acknowledges the claim (for example, by making interest payments or part payments, pledging an asset, or providing a surety).
- The creditor initiates proceedings to enforce the debt (such as debt enforcement proceedings under the DEBA or an action for payment before a state court or arbitral tribunal).

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Arbitration Institutions

5. Which arbitration institutions are commonly used to resolve large commercial disputes?

The most commonly used arbitration institutions in Switzerland are:

- The International Chamber of Commerce (ICC) International Court of Arbitration.
- The Swiss Arbitration Centre.
- The World Intellectual Property Organization (WIPO) Arbitration and Mediation Center.
- The Court of Arbitration for Sport.

Jurisdictional Issues

6. What methods are available for a party to challenge the tribunal's jurisdiction? Does the tribunal or the local court determine issues of jurisdiction?

The principle of kompetenz-kompetenz applies (that is, the arbitral tribunal rules on its own jurisdiction) and is governed by the PILA. The arbitral tribunal must rule on its own jurisdiction (see *Question 2*), which it either does in the form of an interim award on jurisdiction or in the final award. The CPC contains a similar provision (see Article 359(1), CPC). A state court must decline jurisdiction if the parties have entered into an arbitration agreement, subject to limited exceptions (Article 7, PILA; Article 61, CPC).

The arbitral tribunal's decision on its jurisdiction can be appealed to the Federal Supreme Court, provided that eligible parties did not waive their right to appeal (see *Question 2*). An interim award on jurisdiction must be separately appealed (it is not possible to appeal together with the final award).

If a matter subject to an arbitration agreement is brought before any state court in Switzerland, that court must decline jurisdiction unless any of the following apply:

- The defendant has proceeded on the merits without objecting to the court's jurisdiction.

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- The court finds that the arbitration agreement is null and void, inoperative, or incapable of being performed.
- The arbitral tribunal cannot be constituted for reasons that are clearly attributable to the defendant in the arbitration.

For further information, see *Practice note, Arbitration in Switzerland: Jurisdictional issues - The Swiss approach to the principle of kompetez-kompetenz*.

Arbitration Agreements

Validity Requirements

7. What are the requirements for an arbitration agreement to be valid and enforceable?

Substantive/Formal Requirements

Formal requirements. The arbitration agreement must be in writing (or made by any other means of communication that permits it to be evidenced by text) (Article 178(1), PILA). The arbitration agreement does not need to be signed by all the parties (PILA). Similarly, under the CPC, an arbitration agreement must be writing or made by any other form allowing it to be evidenced by text (Article 358(1), CPC).

Other reasons an arbitration agreement is invalid are:

- The parties' lack of legal capacity.
- The parties' lack of capacity to act.
- Agency without authority.
- A plea of defect in consent.
- Substantive requirements not being met.

Substantive requirements. The arbitration agreement must conform to the law chosen by the parties, the law governing the subject matter of the contract, or Swiss law (Article 178(2), PILA).

The exclusion of state jurisdiction (and therefore the consensus to arbitrate) must be clear under the law governing the conclusion and construction of contracts. According to case law of the Federal Supreme Court, the court will interpret an arbitration clause in a way as to uphold its validity.

For further information, see *Practice note, Arbitration in Switzerland: Arbitration agreements – Formal requirements* and *Substantive requirements*.

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Separate Arbitration Agreement

In both international arbitration and domestic arbitration, the arbitration agreement can be either:

- An arbitration clause in the contract.
- A separate arbitration agreement.

Arbitration agreements by reference, such as in the bye-laws of a corporate body or in general terms and conditions, are generally valid.

Unilateral or Optional Clauses

8. Are unilateral or optional clauses enforceable?

Unilateral or optional clauses are enforceable.

For further information, see *Practice note, Arbitration in Switzerland: Arbitration agreements – Optional arbitration clauses*.

Third Parties

9. Can a non-signatory to an arbitration agreement be joined to the arbitration proceedings?

Neither the PILA nor the CPC provide for the joining of non-signatories to arbitration proceedings. An arbitration agreement and the resulting award are only binding on the parties (and their legal successors) to the arbitration agreement.

However, many arbitral institutions' rules, which the parties can choose to apply to their dispute, allow for the joinder of non-signatories (for example, *Article 7* of the ICC Arbitration Rules and Article 6 of the *Swiss Rules of International Arbitration*).

In addition, a non-signatory to an arbitration agreement can be joined to the arbitration proceedings in the following exceptional circumstances, among others:

- Where a third party intervened in the conclusion of, or performs work under, a contract in a manner that creates legitimate grounds to assume that the third party intended to be bound by the contract and the arbitration agreement.

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- The court may find that a corporation lacks a separate identity from an individual or corporate majority shareholder and the corporate veil may be pierced. In this case, the rights and obligations arising out of the agreement concerned, including the arbitration agreement, become binding on that majority shareholder.

For further information, see *Practice note, Arbitration in Switzerland: Arbitration agreements - Extension to non-signatories*.

10. Can a non-signatory compel a party to the arbitration agreement to arbitrate disputes under the arbitration agreement?

Neither the PILA nor the CPC addresses whether a non-signatory can compel a party to the arbitration agreement to arbitrate disputes under the arbitration agreement. Whether a non-signatory has such a right is a matter to be determined by the arbitral tribunal or the competent courts.

Separability

11. Does the arbitration law recognise the separability of arbitration agreements?

Swiss law recognises the separability of arbitration agreements. The validity of an arbitration agreement cannot be contested on the grounds that the principal contract is invalid (Article 178(3), PILA). An arbitration agreement is valid if it conforms to the law chosen by the parties, the law governing the subject matter of the dispute, in particular the law governing the main contract, or Swiss law (Article 178(2), PILA).

For further information, see *Practice note, Arbitration in Switzerland: Arbitration agreements - Separability*.

Breach of Dispute Resolution Clause

12. What remedies are available where a party starts court proceedings in breach of an arbitration agreement or initiates arbitration in breach of a valid court jurisdiction clause?

Court Proceedings in Breach of an Arbitration Agreement

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Where a dispute arising under an arbitration agreement is brought before a Swiss court, the court must decline jurisdiction, unless:

- The defendant proceeded with its defence on the merits, without objecting to the state court's jurisdiction.
- The state court finds that the arbitration agreement is null and void, inoperative, or incapable of being performed.
- The arbitral tribunal cannot be constituted for reasons for which the defendant is manifestly responsible.

(Article 7, PILA; Article 61, CPC.)

For further information, see *Practice note, Arbitration in Switzerland: State courts' powers in support of arbitration - Court proceedings brought in breach of a valid arbitration agreement*.

Arbitration in Breach of a Valid Court Jurisdiction Clause

If arbitration is initiated in breach of a valid jurisdiction clause, the arbitral tribunal, deciding on its own jurisdiction (Article 186(1), PILA), must decline jurisdiction (see *Question 6*).

13. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?

Swiss courts will not grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement. Anti-suit injunctions are contrary to the concept of kompetenz-kompetenz (see *Question 6*).

Arbitrators

Qualifications and Characteristics

14. Are there any legal requirements relating to the qualifications and characteristics of arbitrators?

Qualifications

Neither the PILA nor the CPC contain rules regarding arbitrators' qualifications. Arbitrators are appointed under the parties' agreement. Arbitrators do not require a licence to serve as an arbitrator in Switzerland.

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Characteristics

There are no particular requirements regarding arbitrators' characteristics. Any person with full legal capacity can be appointed as arbitrator. However, an arbitrator can, among other reasons, be rejected if there are justified doubts about their independence or impartiality (see *Question 15*).

Independence and Impartiality

15. Are there any requirements relating to arbitrators' independence or impartiality?

An arbitrator can be rejected if there are justified doubts about their independence or impartiality. The Federal Supreme Court considers the *IBA Guidelines on Conflicts of Interest in International Arbitration* (although without any statutory value) a valuable instrument in assessing conflicts of interest in relation to arbitrators (Supreme Court Decision 142 III 521, consid. 3.1.2).

For more information, see *Practice note, Arbitration in Switzerland: Arbitrators' duties and powers - Duties of independence, impartiality and disclosure*.

Appointment and Removal

16. Does the law contain default provisions relating to the appointment and removal of arbitrators?

Appointment of Arbitrators

In the absence of agreement between the parties, there must be three arbitrators in arbitration under both the PILA and the CPC. Each party appoints one member and the members unanimously elect a president. If the parties have not agreed on the appointment of arbitrators, the matter can be brought before the court at the seat of the arbitral tribunal.

Removal of Arbitrators

The arbitration agreement usually includes rules relating to removal and replacement of arbitrators (for example, by reference to institutional rules, such as Article 14 et seq. of the Swiss Rules of International Arbitration or Article 15 of the ICC Arbitration Rules).

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In addition, there are mandatory provisions relating to the challenge of arbitrators. Arbitrators can be challenged:

- If they do not possess the qualification agreed on by the parties.
- On the grounds for challenge in the rules of arbitration adopted by the parties.
- If the circumstances permit legitimate doubt about the arbitrator's independence.

(Article 180(1), PILA; Article 367(1), CPC.)

If an arbitrator is challenged (notice of which must be given to the challenged arbitrator), the requesting party can ask the state court to render a final decision within 30 days from the notice. During the challenge proceedings, the arbitral tribunal can continue the proceedings without excluding the challenged member until the decision of the state court, unless the parties have agreed otherwise.

Where there is no agreed procedure on the removal of arbitrators, the court at the seat of the arbitral tribunal must rule on the removal.

For further information, see Practice note, Arbitration in Switzerland: Arbitral tribunal - *Challenge* and *Replacement*.

Procedure

Commencement of Arbitral Proceedings

17. Does the law provide default rules governing the commencement of arbitral proceedings?

The parties usually agree to apply certain arbitration rules in relation to commencement of proceedings. The PILA only defines when *lis pendens* (see *Question 2*) occurs, that is, either:

- When one of the parties files a claim before the sole arbitrator or arbitrators designated in the arbitration agreement.
- In the absence of such a designation, when one of the parties institutes the procedure for the appointment of the arbitral tribunal.

(Article 181, PILA; Article 372(1), CPC.)

Applicable Rules and Powers

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18. What procedural rules are arbitrators bound by? Can the parties determine the procedure that applies? Does the law provide any default rules governing procedure?

Applicable Procedural Rules

Chapter 12 of the PILA is premised on the principle of party autonomy. The parties to arbitration proceedings can determine, in the arbitration agreement or by reference to a set of institutional arbitration rules, the procedural rules applicable to the arbitral tribunal (Article 182(1), PILA). They can also submit the arbitral procedure to a procedural law of their choice.

Regardless of the procedural rules chosen, the arbitral tribunal must ensure the parties' equal treatment and right to be heard in adversarial proceedings (Article 182(3), PILA) (see *Question 2*).

The same principles apply in domestic arbitrations.

Default Rules

If the arbitration agreement does not provide for any procedural rules, the arbitral tribunal can determine the applicable rules, either directly or by reference to a law or to arbitration rules (Article 182(2), PILA).

Evidence and Disclosure of Documents

19. Are there any mandatory or default rules governing disclosure or production of evidence? Can the parties set the rules on disclosure of documents and production of evidence by agreement?

The parties usually agree the rules and scope of disclosure. In the absence of an agreement between the parties on issues of evidence, the arbitral tribunal must determine the procedure to the extent necessary (Article 182(2), PILA (for international arbitration); Article 373, CPC (for domestic arbitration)).

The arbitral tribunal must conduct the taking of evidence (Article 184(1), PILA; Article 375(1), CPC). Unlike state courts, arbitral tribunals have no sovereign powers and cannot order coercive measures against parties not complying with evidentiary orders. Therefore, in instances where a party refuses to co-operate with the tribunal, the parties can seek the assistance of Swiss state judicial authorities at the seat of the arbitral tribunal (Article 184(2), PILA; Article 375(2), CPC). In international arbitrations, the Swiss court then applies Swiss procedural law (that is, the CCP (Article 184(3), PILA)), but can also, if so requested by a party, apply a different set of procedural rules.

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The practical significance of state judicial assistance in the taking of evidence is limited, since the arbitral tribunal can only draw negative inferences where a party refuses to comply with an arbitral order.

20. How, in practice, does the scope of disclosure in arbitrations compare with disclosure in domestic court litigation?

The procedure on the taking of evidence, such as disclosure of documents, is determined by the parties or, in the absence of an agreement, by the arbitral tribunal (Article 182(2), PILA; Article 373(1), CPC) (see *Question 19*). Therefore, the admissibility of evidence is assessed in accordance with the chosen or determined procedural law. If the parties agree, arbitrators frequently seek guidance from the *IBA Rules on the Taking of Evidence in International Arbitration*.

When compared to common law discovery proceedings, Swiss arbitrators frequently opt for more limited disclosure. Communication that can be considered legally privileged (such as trade secrets and correspondence with attorneys) is usually exempt from production. However, the tribunal usually allows requests for other documents that are deemed relevant for the determination of the dispute.

Arbitrators frequently manage document production by means of a "Redfern Schedule" (that is, a collaborative document prepared by the parties and the tribunal containing the requests for disclosure, the arguments for the requests, and the tribunal's decisions on each).

Confidentiality

21. Is arbitration confidential? If so, what is the scope of that confidentiality and who is subject to the obligation?

There are no statutory provisions relating to confidentiality in either domestic or international arbitration, although the Supreme Court has confirmed that Swiss arbitral proceedings are, as a rule, not open to the public (Decisions 4A_612/2009 and 146 III 358, noting that Article 6(1) of the European Convention on Human Rights is not applicable to arbitration). In addition, the parties can agree that the fact of their dispute, the resorting to arbitration, and the proceedings and outcome, will remain confidential.

However, confidentiality can only be deemed applicable to the actual arbitration proceedings and not to any related state proceedings in connection with injunctive relief sought by the parties (Article 54(1), CCP). Equally, appeal proceedings to the Supreme Court are generally open to the public (Article 59(1), *Supreme Court Act*).

Scholarly opinions diverge on whether the parties themselves are bound by confidentiality in the absence of an express obligation to that effect.

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Courts and Arbitration

22. What are the court's powers to intervene to assist arbitration proceedings seated in their jurisdiction?

A local court can intervene to assist both domestic and international arbitration proceedings seated in its jurisdiction. In particular:

- To compel parties in matters of evidence or with regard to interim measures not complied with voluntarily by the parties (see *Question 19*).
- Where an arbitration agreement is silent on the appointment of arbitrators, or where the arbitrators cannot be appointed for another reason, a party can approach the local state court judge at the agreed seat of the arbitration, requesting the appointment of arbitrators (Article 179(2), PILA; Article 362, CPC) (see *Question 16*). Where no seat has been elected:
    - the first court approached can appoint the arbitrators in international arbitrations (Article 179(2), PILA); or
    - the arbitrators are appointed by the competent cantonal court in domestic arbitrations (Article 362(1), CPC).

For further information, see *Practice note, Arbitration in Switzerland: State courts' powers in support of arbitration*.

23. In what circumstances might a local court interfere to frustrate an arbitration seated in its jurisdiction?

Risk of Court Intervention

In principle, a Swiss court will not intervene or frustrate correctly commenced domestic or international arbitration proceedings located in Switzerland, as long as the dispute matter can validly be subjected to arbitration (that is, a claim involving an economic interest (Article 177(1), PILA; Article 354, CPC)).

Delaying Proceedings

Parties to arbitration proceedings seated in Switzerland have recourse to state courts in relation to interim measures not complied with or for other coercive orders (see *Question 19*). Invoking these measures can lead to a degree of delay.

Further, a party can try to delay the outcome of the arbitration by challenging the appointment of arbitrators or the jurisdiction of the tribunal itself.

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The final arbitral award itself can be appealed before the state Supreme Court, in limited cases. This can delay the enforcement proceedings.

Insolvency

24. What is the effect on the arbitration of pending insolvency of one or more of the parties to the arbitration?

The commencement of bankruptcy proceedings does not automatically lead to a transfer of rights and obligations of the debtor to the bankruptcy estate. However, previously concluded arbitration agreements remain binding on the bankruptcy estate, whether the estate is a claimant or a defending party.

Remedies

Interim Remedies

25. What interim remedies are available from the tribunal?

Interim Remedies

Unless the parties have agreed otherwise, the arbitral tribunal can, on application by a party, order interim measures (Article 183(1), PILA; Article 374(1), CPC). Interim measures commonly include:

- Safeguarding measures, aiming to secure the subsequent enforcement of the disputed claim, by maintaining or restoring the status quo for the duration of the proceedings.
- Regulatory measures, serving to regulate or stabilise provisionally the relationship between the parties.
- Executory measures, characterised by the fact that they include a temporary enforcement of the alleged claim.

Without Notice Applications

The arbitral tribunal has power to grant interim remedies without notice to the other party, if both:

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- There is urgency or hearing the opposing party would frustrate the measure's effectiveness.
- The arbitral tribunal reviews its decision promptly after issuing the measure and after hearing both parties.

(Article 183 PILA; Article 374 CPC.)

Security

International arbitration. The arbitral tribunal can make the interim or conservatory measures subject to the provision of appropriate security (Article 183(3), PILA), if the applicable arbitration rules allow for this. The Swiss Rules on International Arbitration authorise arbitrators to require payment of security.

Domestic arbitration. The tribunal can award security for costs if the claimant appears to be insolvent (Article 379, CCP). In addition, the defendant must establish that its future costs claim would be frustrated or significantly jeopardised by the claimant's insolvency if not immediately secured.

Final Remedies

26. What final remedies are available from the tribunal?

The type of final remedy issued by a Swiss-based tribunal is determined by the material law applicable to the dispute and available to the parties under that governing law. As a rule, for arbitrations taking place in Switzerland, a final award can order a party to:

- Pay damages.
- Perform specific actions or desist from certain actions.

International awards that would be considered to be contrary to the Swiss understanding of the public policy doctrine (*ordre public*) (such as awarding high punitive damages) risk being unenforceable. A party can appeal such an award to the Supreme Court on public policy grounds (Article 190(2)(e), PILA).

Awards in areas of law that are not arbitrable (for example, family law matters) cannot be enforced in Switzerland.

For further information, see *Practice note, Arbitration in Switzerland: Awards - Form, content and notification*.

Appeals

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27. Can an arbitral award be appealed or challenged in the local courts? What are the grounds and procedure? Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises?

Rights of Appeal or Challenge

An international arbitral award rendered in Switzerland can be appealed or reviewed (Article 190a, PILA). Domestic arbitral awards are also appealable on limited grounds (Article 389, CPC).

Grounds and Procedure

Appeal. An appeal against an international award must be initiated before the Swiss Supreme Court (Article 191, PILA), within 30 days of the arbitral award's notification, invoking one of the setting aside grounds in Article 190(2) of the PILA. Unless explicitly requested and granted by the Supreme Court, an appeal does not suspend the executability of the award.

An arbitral award can be appealed if:

- The sole arbitrator was not properly appointed or the arbitral tribunal was not properly constituted.
- The arbitral tribunal wrongly accepted or declined jurisdiction.
- The arbitral tribunal's decision went beyond the claims submitted to it or failed to decide one of the items of the claim.
- The principle of equal treatment of the parties or the right of the parties to be heard was violated.
- The award is incompatible with public policy.

(Article 190(2), PILA.)

Review. An arbitral award can be reviewed by the Supreme Court within 90 days of discovering the reason for the review if:

- After the rendering of the award, significant evidence or information is obtained that was not available earlier despite exercising due diligence. This does not apply to facts or evidence that came into existence after the award was issued. (Article 190a(1)a, PILA.)
- Criminal proceedings have established that the arbitral award was influenced to the detriment of the party concerned by a felony or misdemeanour, even if no one is convicted by a criminal court. If criminal proceedings are not possible, proof can be provided in some other manner. (Article 190a(1)b, PILA.)
- A ground for a challenge under Article 180(1)c of the PILA comes to light only after conclusion of the arbitration proceedings, despite exercising due diligence, and no other legal remedy is available (Article 190a(1)b, PILA).

Waiving Rights of Appeal

In international arbitrations, if none of the parties has their domicile, habitual residence, or a business establishment in Switzerland, they can by an express statement in the arbitration agreement or by a subsequent written agreement, waive their right to appeal the award (Article 192, PILA). They can also bilaterally limit the grounds for appeal to one or several of the grounds listed in Article 190(2) of the PILA. This option is not available in domestic arbitrations.

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28. What is the time limit to challenge or appeal an arbitration award rendered inside your jurisdiction?

The time limit to appeal an arbitration award rendered in Switzerland is 30 days of the award's notification (Articles 77 and 100(1), Supreme Court Ac). The limitation period is not extendable.

Costs

29. What legal fee structures can be used? Are fees fixed by law?

Fee Structures

The parties are free to determine the fee structures. Hourly rates depending on experience level are usually agreed.

Contingency fees are not permitted. However, conditional fee arrangements providing for a bonus in the case of successful litigation are permitted, if the base fee for the attorney provides a reasonable income. A conditional fee agreement must be made at the start of the matter or after the matter is concluded.

Parties usually finance litigation privately.

Third Party Funding

Third party funding of arbitration is allowed. There are a few third party funding providers and their services are becoming increasingly popular.

Lawyers must remain independent and free from influence in the execution of their mandate and must not participate in the funding.

If a party resorts to third party funding, they are expected to disclose this fact and the identity of the third party funder, to enable each arbitrator to run a conflict check to ensure that the involvement of the third party funder does not affect the arbitrator's independence or impartiality.

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30. Are there any mandatory or default rules governing the allocation of costs?

Cost Allocation

The arbitration rules agreed by the parties usually contain rules on the allocation of costs. For example, the Swiss Rules on International Arbitration provide that the costs of the arbitration must in principle be borne by the unsuccessful party. However, the arbitral tribunal can apportion any of the costs of the arbitration among the parties if it determines that the apportionment is reasonable, taking into account the circumstances of the case (Article 40(1), Swiss Rules on International Arbitration).

In domestic arbitrations, the award must include a finding on costs, but no specific rules apply (Article 384(1)f, CPC).

The costs for a party's legal counsel is reimbursed in the final award, if the costs were claimed during the arbitral proceedings and to the degree the arbitral tribunal deems the amount to be reasonable (Article 38(e), Swiss Rules on International Arbitration).

Cost Calculation

The parties are free to agree on the rules applicable to costs.

Factors Considered

The arbitrators consider several factors when determining costs:

- The claim amount.
- The complexity of the matter.
- The duration and stages of the proceedings (submissions, hearings, and evidence).
- The parties' contribution to the efficient conduct of the proceedings and avoidance of unnecessary costs and delays.

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Publications

- *For internationally active companies, continuing their business in Russia is a balancing act, Neue Zürcher Zeitung, 6 June 2023, p. 8, with Martin Heisch.*
- *Chambers Europe 2023, Switzerland – Statutory Arbitration Clauses under the new Swiss Corporate Law, April 2023, with Martin Heisch.*
- *Collective Redress - Switzerland keeps up with European developments, Chambers Europe, May 2022, with Martin Heisch.*
- *Chambers Europe 2021 Overview, May 2021, with Marcel Frey.*
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- *Admissible and Inadmissible Complaints in Swiss Arbitration, The Lawyer, April 2020, with Marcel Frey.*

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- Assisting Swiss bank as civil complainant in complex fraud investigation.
- Representing foreign client in large-scale commercial litigation regarding infrastructure project.
- Issuing expert reports on issues of Swiss law for English High Court of Justice proceedings.
- Assisting sovereign fund in claims against Swiss bank.
- Representing claimants and defendants in high-level D&O claims.

Languages. German, English, French, Afrikaans

Professional associations/memberships. Zurich and Swiss Bar Association; SwissCham Southern Africa.

Publications

- *Heirs' information requests to banks: cracking the safe in Switzerland, September 2024, in: IFLR Local Insights, with Urs Feller.*
- *Internal investigations – a balancing act for HR and in-house counsel, July 2024, in Corporate Disputes, with Urs Feller and Reto M Jenny.*
- *Jurisdictional hurdles in investment disputes in China – a recent judgment of the Swiss Federal Tribunal, March 2024, in: Prager Dreifuss newsletter, with Bernhard C Lauterburg.*
- *Internal investigations – a balancing act for HR and in-house counsel, February 2024, in Prager Dreifuss newsletter, with Urs Feller.*
- *Commercial Arbitration in Switzerland, February 2024, in: Financier Worldwide, with Reto M Jenny.*
- *The right to appeal for reasons of recusal – The Federal Tribunal maintains a strict approach, January 2024, in Prager Dreifuss newsletter, with Bernhard C Lauterburg.*
- *Globalisation reaches the Zurich Commercial Court, December 2023, in: Neue Zürcher Zeitung, with Urs Feller.*
- *Litigation and Enforcement in Switzerland: Overview, November 2023, Practical Law Global Guide Guide 2023, with Urs Feller and Bernhard C Lauterburg.*

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- *Arbitration Procedures and Practices in Switzerland: Overview, November 2023, Practical Law Global Guide 2023, with Urs Feller and Bernhard C Lauterburg.*
- *Switzerland: updated legislation for internal investigations at banks and financial services providers, in IFLR Local Insights, October 2023, with Urs Feller.*
- *The long race of Caster Semenya: European Court for Human Rights chides Swiss Federal Supreme Court, in: Prager Dreifuss newsletter, May 2023.*
- *INDEPTH FEATURE: Commercial Arbitration 2023 – Switzerland in: Financier, February 2023, with Reto Jenny.*

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Professional qualifications. Admission to the bar, Switzerland, 2010

Areas of practice. Competition and regulatory; corporate and commercial; litigation and arbitration.

Non-professional qualifications. Georgetown University Law Centre, LLM, 2006

Recent transactions

- Representing clients before state courts and arbitral tribunals.
- Advising on competition law (unfair competition, mergers, cartel investigations, abuse of dominance, distribution agreements, and private enforcement of competition law).
- Advising on public procurement law and state aid law.

Languages. German, English, French

Professional associations/memberships. Swiss and Berne Bar Association; Swiss Arbitration Association; Studienvereinigung Kartellrecht e.V.; Swiss Chapter of the Ligue Internationale du Droit de la Concurrence; International Bar Association.

Publications

- *The Legal 500 Merger Control Guide (2024), Chapter on Switzerland, together with Philipp Zurkinden.*
- *GCR - The Guide to Life Sciences - Third Edition (2024) - "Switzerland: Divergence from EU law expected to transform merger control and mutual market access," with Philipp Zurkinden, Marino Baldi, and Andrea Schütz.*

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- *Lexology In-Depth Cartels and Leniency (2024), Chapter on Switzerland, together with Philipp Zurkinden.*
- *Jurisdictional hurdles in investment disputes in China – a recent judgment of the Swiss Federal Tribunal, March 2024, in: Prager Dreifuss newsletter, with Marcel Frey.*
- *The right to appeal for reasons of recusal – The Federal Tribunal maintains a strict approach, January 2024, in Prager Dreifuss newsletter, with Marcel Frey.*
- *SIWR - Commentary on Article 49a(1) of the Swiss Law on Cartels and other Restraints of Competition (2023).*
- *LexGTDT Competition in Digital Markets 2023 – Switzerland, together with Philipp Zurkinden.*
- *CoRe - Switzerland · Expanded Scope for Control of Abusive Conduct and Proposal for Reform of Antitrust Enforcement (N° 1/2022), together with Philipp Zurkinden.*
- *Sun Yang and Switzerland's international arbitration rules, March 2021, in IFLR, with Marcel Frey.*
- *Competition Law Analysis of Price and Non-price Discrimination, in: LIDC Contributions on Antitrust Law, Intellectual Property and Unfair Competition – Chapter on Switzerland (Springer, 2021).*
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