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Efficiency of process

The litigation process in Switzerland is, in general, highly efficient and reliable with case backlog being limited. Switzerland is therefore widely regarded as an attractive location for the resolution of commercial disputes before state courts.

For more than a decade now, civil proceedings have been governed by the Civil Procedure Code (“CPC”), which came into force on 1 January 2011 to harmonise the former procedural rules of the 26 cantons. However, the country’s federal structure and history have left their mark on the judiciary, not only by providing different competent courts depending on the canton in which a claim is filed, but also by distinguishing between the cantonal and the federal levels within the stages of a court proceeding with different procedural rules applicable to the respective stages.

In general, there is an obligation for the parties to enter into a (pre-action) conciliation procedure before being allowed to submit a claim to the court. If no settlement can be found, the claimant can file the claim with the cantonal first-instance court. A judgment by the first-instance court can be appealed to the High Court of the canton concerned. The High Court is entitled to a full review of the first-instance judgment on both legal and factual grounds. Following a judgment of the canton’s High Court, a further appeal is possible to the Federal Supreme Court, albeit only on limited grounds. In particular, while the Federal Supreme Court will in most circumstances undertake a full review of the legal issues, only manifestly wrong factual findings can be challenged at this stage.

In addition, the CPC grants the cantons the option to establish commercial courts, which are competent to hear commercial claims if (1) the dispute concerns the commercial activity of at least one of the parties, (2) the amount in dispute exceeds 30,000 Swiss francs, (3) at least the defendant is registered in a commercial registry, and (4) no excluded subject matter, such as, *inter alia*, labour or tenancy law, is concerned. Four cantons – Zurich, Bern, St. Gallen and Aargau – have established such courts. Although formally integrated into the cantonal High Courts, commercial courts serve as first-instance courts, with the Federal Supreme Court as the sole appeal instance.

In practice, most commercial disputes in these cantons that are not referred to arbitration are brought before the commercial courts. In the Canton of Zurich, the approach of the Zurich Commercial Court is internationally recognised as an efficient forum for resolving such disputes. Typically, the court holds a

settlement hearing following the initial round of written submissions (usually within six to nine months after the initial filing of the claim). During this hearing, a delegation of the judicial panel provides a preliminary yet comprehensive assessment of the case. Consequently, the parties are incentivised to set out their factual and legal positions in full and to submit all the supporting evidence in the first round of written submissions. As a result, about two-thirds of the disputes are settled at an early stage of the proceedings within nine months (see below regarding the establishment of a Zurich International Commercial Court – “ZICC”).

Integrity of process

Switzerland is widely recognised for its effectiveness in combatting corruption and bribery, supported by a robust legal framework and a reputation for institutional integrity. Switzerland consistently ranks among the least corrupt countries globally. In the 2024 Corruption Perceptions Index (“CPI”) Ranking reported by Transparency International, Switzerland scored 81 out of 100, placing it fifth out of 180 countries evaluated.¹ This reflects a relatively low level of perceived corruption compared to other countries. Against this backdrop, Switzerland’s judiciary enjoys high public trust, both domestically and internationally.

As a fundamental component of the rule of law, the principle of judicial independence is enshrined in the Swiss Constitution. Courts are independent to decide free from external instructions. To ensure impartiality and fairness of the proceedings, the CPC provides for a standard procedure for the challenge of judges suspected of bias or partiality.²

Privilege and disclosure

Attorney-client privilege

In Switzerland, the scope of attorney-client privilege extends to all correspondence between the attorneys (including patent attorneys) and their clients relating to a specific mandate. It applies irrespective of the form in which the information requiring protection is communicated to the attorney or the source from which it originates. Put differently, privileged information remains protected regardless of whether it was obtained in written, oral, or non-verbal form, whether it stems from the client or a third party, or whether it was independently acquired by the attorney.

Activities that do not fall within the core professional functions of an attorney do not benefit from attorney-client privilege. In this regard, case law from the Swiss Federal Tribunal applies a rather restrictive approach. Only tasks in which legal aspects, such as legal advice or representation before courts, clearly outweigh commercial or operational considerations are deemed privileged. Activities with a primarily business-oriented character (e.g. asset management or fulfilling know-your-customer (“KYC”) obligations on behalf of a bank) generally fall outside the privilege.

The “without prejudice” principle regarding proposals circulated between the parties during out-of-court settlement discussions is not covered by statutory privilege but is generally recognised by the courts when communication made in the context of genuine settlement negotiations is at issue. Also, the cantonal and federal Bar rules governing the conduct of attorneys in Switzerland include the principle.

In-house counsel privilege

While attorney-client privilege has traditionally been limited to communications exchanged between clients and their attorneys, the latest revision of the CPC that came into force as of 1 January 2025 introduced an in-house counsel privilege.³ For the new provision to apply, the following three conditions must be met cumulatively:

- First, the legal entity invoking the in-house counsel privilege must be registered in the Swiss commercial register or in an equivalent foreign register.

- Second, the head of its legal department is required to either hold a cantonal Bar licence or a respective licence from their country of origin. According to the Federal Council, this is to ensure that the compliance section of the company in question entertains a minimum level of professional skills, thus justifying the legal privilege of non-cooperation with the requesting court.
- Third, the activity for which privilege is sought must be considered “profession-specific”. As has been stated above, case law follows a restrictive approach in this regard. As a result, the scope of privileged in-house counsel activities in areas such as internal investigations or commercial negotiations has yet to be clearly shaped by case law.

It is important to note that the new provision is limited to civil proceedings and does not apply to criminal and administrative proceedings.

Disclosure

As a general rule, the parties set out the facts and determine the evidence to be presented to the court in their respective submissions. If a piece of evidence referred to in the submission is in the possession of the counterparty, the court may, upon request, order that party to produce it. The court will grant such a request if it decides that the evidence is necessary to establish facts that are both contested between the parties and material to the case. The court will then set a deadline to produce the requested evidence. Overly broad or vague requests (“fishing expeditions”) for document production are not permitted. Requests must specify the documents in detail (requests that are too general, such as “all documents evidencing fact X”, are not likely to be deemed specific enough, whereas a request like “all minutes of board meetings between date X and date Y” concerning a specific topic may be acceptable).⁴

There is no US-style pre-trial discovery in Switzerland. However, before initiating proceedings and at any time during trial, a court can order a precautionary taking of evidence if the applicant demonstrates *prima facie* evidence of an interest worthy of protection or has a statutory right to evidence.⁵ The applicant must pay for the court fees involved with the taking of evidence.

The burden of proof regarding the authenticity of a submitted document lies with the party seeking to rely on it. Certain restrictions apply to introducing new evidence after a certain point in the proceedings (the respective cut-off date typically occurs after the parties have had two opportunities each to present their case).

Parties to the litigation, third parties, and witnesses do not need to testify and are entitled to withhold documents if they can invoke a statutory privilege (for example, attorney-client or in-house counsel privilege (see above), or if they have a particularly close personal relationship to a party; for example, being directly related or married).

While the CPC does not prescribe the retention of documents during litigation, provisions in the Code of Obligations (“CO”) require commercial entities to keep their records for 10 years.⁶ A party refusing to disclose documents without justification cannot be sanctioned but can allow the court to draw adverse inferences. Non-compliance by a third party with an order of the court may be sanctioned. Documents are normally submitted in hard copy and are sometimes supplemented by a set of electronic files.

If a party or third party subject to a document production request claims that producing the documents would endanger its legitimate business interests, e.g. trade secrets, the court may issue protective orders to safeguard those interests.

Evidence

The CPC provides for the following exhaustive catalogue of types of evidence:⁷

- witness testimony;
- documentary evidence;

- inspections by the court;
- expert opinion;
- written statements; and
- the examination of and evidence given by the parties.

In the following, witness testimonies and expert opinions warrant a closer look.

Witness testimony

Witnesses are proposed by the parties in their submissions, but ordered to appear and to give oral evidence by the court. They may be subject to criminal penalties for giving false testimony. A witness who fails to appear may be summoned or sanctioned by the court. Witness statements are not common in Switzerland. As with every means of permissible evidence, the court must form its opinion based on its free evaluation of the evidence. Accordingly, the law does not prescribe any rules on the probative value of evidence (except that public registers and official records are conclusive evidence of the facts they state, unless their accuracy is proven to be incorrect).

While documentary evidence is generally regarded as more reliable than witness testimony, the probative value of a testimony can be very high depending on how that testimony is given. There is no specific right to cross-examine witnesses. However, following the initial interrogation by the judge, each party can put additional questions to the witness either through the judge or, with authorisation by the judge, directly to the witness. Additional questions by counsel that go beyond the issues on which the court heard testimony, or repeat questions already asked by the judge, are not permitted. The CPC also allows a court to pit witnesses against each other and against the parties.

Expert opinion

Experts are appointed and questioned by the court and are subject to the same rules on conflicts of interest as judges. Where the court considers that expert knowledge or a technical assessment of factual evidence is required, it can appoint one or several experts. The parties can express their opinion on the court's choice and may oppose the appointment of a certain expert. The parties can comment on the questions posed to the expert and request other or further questions to be posed to the expert. Similarly, they are entitled to comment on the expert's conclusions and can under certain circumstances request the appointment of a new expert.

Court-appointed expert fees must be advanced by the party requesting the expert opinion. The court takes into consideration the burden of proof when deciding which party must advance the costs. Expert fees are added to the court fees at the end of proceedings and are borne by the unsuccessful party. Alternatively, they can be split proportionally among the parties, reflecting the parties' varying degrees of success.

Party-appointed experts

In the past, opinions given by party-appointed experts were considered by case law as mere party allegations (albeit well-substantiated ones). As part of the latest revision of the CPC effective from 1 January 2025, reports by party-appointed experts are formally regarded as documentary evidence.⁸ Therefore, such reports now fall within the catalogue of admissible types of evidence and are subject to the principle of free evaluation of evidence by the courts.

Costs

Swiss civil procedure follows the "loser-pays" rule, requiring the unsuccessful party to bear the court costs and – in addition to paying its own legal fees – also compensate the winning party for that party's legal fees.⁹ Both court costs and party compensation are determined on the basis of cantonal tariffs, which can vary from canton to canton.¹⁰ In most cases, the compensations awarded cover only part of the actual legal costs incurred.

As a general rule, a claimant upon initiating proceedings is required to pay an advance on costs. With the new revision of the law aiming at reducing the financial barriers for claimants, advance payments have been limited to half of the expected court costs. However, there are exceptions to this rule, most notably in cases falling under the jurisdiction of international commercial courts, and in appeal proceedings, claimants may still be required to pay the full amount upfront.

Furthermore, each party must advance the costs for the taking of evidence that it has requested. If both parties request the same measure, the costs may be equally shared. In cases of one party's default, the other party is free to advance the full amount to ensure that the requested evidence is obtained. If neither party pays, the evidence will not be taken, save for cases where the court is obliged to establish the facts *ex officio*.¹¹

In addition, upon the defendant's request, the claimant can be required to provide security for the party costs if (1) the claimant has no residence or registered office in Switzerland and no international treaty exemption applies, (2) the claimant appears to be insolvent, (3) it owes costs from previous proceedings, or (4) there are other grounds for assuming that potential party compensation would be at risk.¹²

Regarding the recovery of court costs, costs will still be offset against the advance payments made by the party responsible for these costs. However, if the party not responsible for the costs (usually in cases where the claimant is the successful party) has made an advance payment, it will be refunded, and any remaining costs will be sought from the party responsible for covering the court costs. This shift means that the state (i.e. the canton), rather than the claimant, now bears the risk of recovering outstanding costs.

Litigation funding

In 2004, the Swiss Federal Supreme Court rendered a landmark decision affirming the general admissibility of commercial third-party litigation funding.¹³ Later, the court even found that informing a client about the options of obtaining third-party funding can form part of the attorney's duty to diligently perform their mandate.¹⁴

Despite this early endorsement by case law, drawing definitive conclusions about the overall prevalence of litigation funders within Switzerland is not straightforward. This is due, on the one hand, to the fact that litigation funding agreements are seldom disclosed – and there is no obligation to do so – and, on the other hand, to the cross-border nature of many funding operations. Importantly, pure contingency fees are not permitted in Switzerland. However, conditional fee arrangements providing for a bonus in the case of successful litigation are under certain circumstances permitted if the base fee for the attorney provides a reasonable income.¹⁵ Recent years have seen a notable increase in the number of litigation funding providers in Switzerland and their services are becoming increasingly popular.

Class actions

A fierce debate over the introduction of new class actions mechanisms has been ongoing for more than a decade, with different proposals made to mirror the legislative developments in the EU and elsewhere. However, the National Council recently rejected a draft bill that aimed to expand existing collective redress tools by introducing an extended association claim and group settlement proceedings.¹⁶ While the decision of the Council of States – the second parliamentary chamber – was still pending at the time of finalising this chapter, a different outcome is unlikely. This marks the latest chapter in a debate that was shaped by strong resistance from both politicians and the business community who have consistently portrayed US-style class actions as instruments leading to increased litigation and legal uncertainty for domestic businesses.

Existing collective redress mechanisms include the *joinder of parties*, which allows multiple claimants with claims based on a similar set of facts or legal grounds to join their claims in single proceedings.¹⁷ However, each party must participate individually in the proceedings and there is no binding effect

for absent parties. Consequently, the practical significance of this institute as a collective redress tool remains limited, as coordinating numerous parties with different – potentially conflicting – objectives can be onerous.

In theory, *association claims* are designed to serve as a representative litigation tool under current law. Associations and other organisations of national or regional importance that are authorised by their articles of association to safeguard the interest of their members are allowed to bring claims in their own name on behalf of those members. However, because such claims are limited to violations of the personality rights of the members of the group and because remedies are limited – particularly with no monetary claims available – this institute has so far proved unsuccessful in practice.¹⁸

A further option for damaged parties is to join a multitude of claims by assignment to a special-purpose vehicle (“**SPV**”) (e.g. a consumer protection organisation, a professional service provider or an *ad hoc* founded entity). The assignee then bundles and files the claims in its own name, rather than under the names of the assigning individuals, in a standard two-party proceeding through the joinder of claims (“**assignment model**”). Each claim is then assessed individually on its merits. The resulting judgment is binding only on the parties that have assigned their claims. Accordingly, the assignment model is tailored as an opt-in mechanism. In a high-profile case related to *Dieselgate*, the Swiss Federal Court rejected the use of the assignment model, ruling that the claimant, a consumer protection foundation, lacked the authority to act as a procedural SPV.¹⁹ While the decision reflects the scepticism Swiss courts hold towards group litigation, it should not be read as a rejection of the assignment model in its entirety. This is all the more the case given the significant political resistance to broader legal reforms, suggesting that the assignment model may remain one of the few effective tools for pursuing mass damages in Switzerland. As can be seen from case law in Germany and Austria – two jurisdictions with procedural frameworks largely similar to Switzerland – the assignment model can play a crucial role in asserting mass damage claims in the absence of proper collective redress tools.²⁰

Interim relief

Swiss law distinguishes between interim relief measures aimed at securing monetary claims and measures dealing with non-monetary matters. Monetary claims can be secured by applying for an attachment order under the Debt Enforcement and Bankruptcy Act (“**DEBA**”). All other interim measures (i.e. measures aiming at the protection of non-monetary claims) are governed by the CPC.

Non-monetary claims

Under the CPC, the court can order interim measures if the applicant can establish on a *prima facie* basis that (a) a right to which it is entitled has been infringed or is in danger of being infringed, and (b) such infringement threatens to cause harm that cannot easily be repaired.²¹ In addition, the applicant must also show urgency (or extreme urgency in the case of an *ex parte* application) and that the interim measure sought is proportionate.

Interim measures ordered by the court can take the form of mandatory or prohibitory interim injunctions, such as:

- An order to remedy an unlawful situation.
- An order to a register authority or to a third party.
- An order for performance in kind.
- An order for payment of a sum of money, in cases provided by law.²²

Interim measures can be applied for either before proceedings begin or at any later stage during the proceedings. For interim measures sought prior to the initiation of proceedings, the court sets a deadline for the applicant to file a claim. The court can make the interim measure conditional on payment of a security by the applicant if it is anticipated that the measures could cause loss or damage to the counterparty.

For highly urgent matters, an *ex parte* order may be obtained on the same day or within a few days. In such cases, the court will summon the parties to a hearing or set a deadline for the counterparty to comment on the ordered measure in writing, following which the order may be amended or lifted by the court.²³

Interim orders by a first-instance court are subject to appeal to the cantonal High Court. A further appeal to the Federal Tribunal is possible on very limited grounds, i.e. the appellant must demonstrate either that it would otherwise suffer irreparable harm if the appeal was not granted or that the decision by the Federal Tribunal could lead immediately to a final decision, thereby avoiding lengthy and costly proceedings.

Monetary claims (attachment order)

Interim measures regarding monetary claims – which are highly relevant in practice – are exclusively dealt with through attachment proceedings, as codified in the DEBA. Unlike interim measures under the CPC, attachment orders are granted solely on an *ex parte* basis. To obtain such an order, the applicant must establish the following on a *prima facie* basis:

- *Existence of a claim:* The claim must be due (with some exceptions) and not secured by a pledge.²⁴ The claim can, for example, result from a contract, from tort, or from unjust enrichment.
- *Ground for attachment:* The law provides for six statutory grounds for attachment,²⁵ of which, in practice, the following two are by far the most significant, (i) attachment proceedings against debtors not domiciled in Switzerland, so-called “foreigner attachment”,²⁶ and (ii) attachment proceedings based on domestic or foreign judgments of state courts or arbitral tribunals.²⁷
- *Debtor’s assets located in Switzerland:* The court and the debt enforcement office do not search independently for assets of the debtor and the debtor is under no obligation to provide (further) information about his assets after the attachment order is issued.

Provided each of these requirements is fulfilled, the court issues an *ex parte* attachment order to the debt enforcement office. The decision is usually made within a few days, sometimes even on the same day as the request (which is often the case in Zurich). The debt enforcement office executes the attachment, for example, by an order to a bank to freeze the debtor’s bank accounts. Although attachment orders are more often than not directed at third parties (e.g. banks), they operate *in rem* rather than *in personam*. The creditor must validate its claim within a short 10-day period (e.g. by initiating debt enforcement proceedings or by filing a claim). Ultimately, an attachment leads to the realisation of the attached assets of the debtor.

The rules on attachment provide for relatively short time limits. Nevertheless, due to the possibility of appeals and, in cross-border matters, the necessity to serve documents abroad, obtaining a final decision on an attachment request may take weeks or even months. During that time, the attachment remains in force. If an attachment is not granted, the counterparty is not notified of the request.

Enforcement of judgments/awards

Enforcement procedures differ depending on whether the judgment concerns a monetary obligation or a non-monetary (specific performance) obligation. The enforcement of money judgments is governed by the DEBA, while the enforcement of non-monetary judgments is governed by the CPC.

Non-monetary claims

Judgments ordering specific performance are enforced under the CPC and enforcement must be pursued in summary proceedings with the enforcement court at the defendant’s place of residence (for natural persons) or place of registered office (for legal persons). Enforcement requests can also be brought at the place where the measures are to be executed or where the original judgment was rendered.

The applicant must submit the documents showing that their claim is enforceable. The judge then orders the obliged party to effect performance under threat of penal sanctions if performance is refused. The

judge can also authorise the applicant to engage a third party to perform the obligation on behalf of the counterparty.²⁸

Monetary claims

Debt enforcement is initiated through preliminary proceedings, in which the creditor files a request for debt enforcement with the competent debt enforcement office. The request must identify the creditor and debtor, the amount claimed, and the basis for the claim. Importantly, the creditor does not need to provide evidence or a judgment at this stage.

Upon receipt of the request, the debt enforcement office issues a payment order without assessing the merits of the claim. The debtor has three options: (1) pay within 20 days; (2) oppose within 10 days; or (3) remain passive, allowing the creditor to continue enforcement after 20 days but within a year. An objection suspends proceedings immediately.

To set aside the opposition declared by the debtor, the creditor has the following three options:

- *Apply for a definite order permitting the creditor to set aside the objections by the debtor (Definitive Rechtsöffnung)*: This is based on an enforceable judgment, unless the debtor proves that the debt is no longer valid.²⁹
- *Apply for a provisional order permitting the creditor to set aside the objections by the debtor (Provisorische Rechtsöffnung)*: This is based on a signed or notarised acknowledgment of debt. The provisional order becomes effective if the debtor fails, within 20 days of the order, to file a complaint with the court, seeking a declaration that he does not owe the creditor the claimed amount (*Aberkennungsklage*).³⁰
- *File a claim (Anerkennungsklage)*: If the creditor has neither an enforceable judgment nor a written acknowledgment of debt, the creditor must file a claim for a money judgment with the competent court.³¹

If the debtor does not object, enforcement can proceed swiftly. This procedure offers efficiency while still allowing debtors to raise objections easily. Once the preliminary phase is completed, the creditor may request actual enforcement (*Fortsetzungsbegehren*),³² which proceeds by attachment, bankruptcy, or realisation of pledged property, depending on the debtor's status and type of claim.

Cross-border litigation

In cases where civil proceedings extend to international matters, Switzerland relies on the principles of private international law, codified in the Private International Law Act ("PILA"), along with bilateral and multilateral agreements (of which, in practice, the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("**Lugano Convention**") is the most significant). The PILA governs the jurisdiction of Swiss judicial and administrative authorities, the applicable law, the conditions for recognition and enforcement, bankruptcy proceedings, composition agreements, and international arbitration.

Recognition and enforcement of foreign judgments

PILA

In general, the PILA stipulates that the following three requirements must cumulatively be met in order for a foreign judgment to be recognised and, if necessary, enforced in Switzerland:

- *International jurisdiction of the state of origin from a Swiss law perspective*:³³ The Swiss court will only examine whether the jurisdiction of the issuing state is in line with the principles applying under Swiss law (so-called "indirect jurisdiction"). As a general rule, Switzerland, *inter alia*, accepts judgments from foreign courts if the defendant had his domicile in that foreign state.³⁴

- *The foreign judgment is final and binding, or no ordinary remedy is available under the law of the issuing state:*³⁵ A decision is considered final when there is no pending appeal and the time limit to file one has expired. With regard to jurisdictions that do not impose strict time limits, it is also possible to demonstrate in the application that there is no reasonable prospect of an appeal. Some uncertainties remain with regard to interim measures as it is subject to controversial debate among scholars and not conclusively qualified by case law whether such measures qualify as final within the meaning of the PILA.
- *Absence of formal and substantive grounds for refusal:*³⁶ This condition essentially refers to fundamental procedural rights and *ordre public*.

Lugano Convention

If the judgment was rendered by a court of a Lugano Convention signatory state (i.e. Switzerland, the EU as well as Denmark, Iceland and Norway), an enforcement application must be filed with the competent Swiss court, along with a copy of the judgment satisfying the conditions necessary to establish its authenticity and a certificate issued by the court that rendered the judgment.³⁷ The court must decide on such application in *ex parte* summary proceedings and declare the judgment enforceable immediately on satisfaction of the formalities under Annex V, without reviewing whether there are grounds to deny recognition and enforcement. The party against whom the enforcement is sought is not heard until the appeal stage.

The actual enforcement of a foreign judgment then follows the same rules that apply for Swiss judgments; i.e. monetary claims are enforced according to the rules set out in the DEBA whereas enforcement of all other claims is done pursuant to the enforcement rules stipulated in the CPC (see above).

Hague Convention on Choice of Court Agreements

On 1 January 2025, the Hague Convention of 30 June 2005 on the Choice of Court Agreements (“**Hague Convention**”) came into effect in Switzerland. The Hague Convention aims to ensure the legal effectiveness of choice of court agreements between parties in international commercial transactions, thereby providing greater legal certainty and efficiency. The Lugano Convention remains in effect and generally takes precedence over the Convention, except where both parties are domiciled in states that are part of the Hague Convention but not also both contracting parties to the Lugano Convention. Nonetheless, the Hague Convention holds particular importance for cases involving countries outside the Lugano Convention, including the UK in the post-Brexit era. The Hague Convention applies to choice of court agreements entered into on or after 1 January 2025.

Zurich International Commercial Court

As part of the latest revision of the CPC, which came into force on 1 January 2025, the cantons have the option to allow English as the language of proceedings in addition to their local official language(s).³⁸ In the Canton of Zurich, the local legislator is currently in the process of establishing a ZICC to take on international cases that could be led in English. The ZICC is currently expected to be launched as an additional chamber of the existing commercial court in 2026³⁹ at the earliest (though informal information suggests not before 2027).

International arbitration

Switzerland is widely recognised as one of the world’s most liberal and arbitration-friendly jurisdictions and a top venue for international arbitration both with regard to *ad hoc* arbitrations as well as institutional arbitration.

The prevailing sets of rules are the Rules of Arbitration of the International Chamber of Commerce (“**ICC Rules**”) and the Rules of the Swiss Arbitration Centre (“**Swiss Rules**”). Furthermore, there are

specialised arbitral institutions, such as the Court of Arbitration for Sports (“CAS”) in Lausanne and the WIPO Arbitration and Mediation Centre for IP and Technology Disputes in Geneva. International arbitration is governed by the 12th Chapter of the PILA, whereas domestic arbitration is governed by the CPC. Switzerland is also a signatory state to the New York Convention.

Arbitration agreements can be concluded in any form allowing it to be evidenced by text.⁴⁰ As is the case in most jurisdictions, the validity of the arbitration agreement is assessed independently from the main contract or the legal relationship it belongs to (separability doctrine). In international arbitration, any claim that involves an economic interest may constitute arbitrable subject matter, which includes almost all commercial disputes. By contrast, in domestic contexts, a claim may be submitted to arbitration if the parties have legal freedom to dispose of it. Swiss case law adopts a “pro-arbitration” approach when determining the scope of the clause. Accordingly, it is generally assumed that the party’s consent not only covers issues regarding the conclusion, performance and termination of the contract, but also tort claims related to the contract and non-contractual claims arising from the principle of *culpa in contrahendo*.⁴¹

Arbitral awards rendered in Switzerland may be appealed before the Swiss Supreme Court within 30 days upon receipt of the award. In international arbitration, an arbitral award can be set aside on the following (limited) grounds:⁴²

- where the sole member of the arbitral tribunal was improperly appointed or the arbitral tribunal was improperly constituted;
- where the arbitral tribunal wrongly accepted or rejected jurisdiction, or where the arbitral tribunal ruled beyond the claims submitted to it or failed to decide one of the claims;
- where the principle of equal treatment of the parties or their right to be heard in an adversary procedure was violated; and
- where the award contravenes Swiss public policy.

In domestic arbitration, the grounds for appeal are slightly broader than in international arbitration, allowing challenges also for manifestly incorrect application of the law and manifestly excessive fees and expenses fixed by the arbitral tribunal.⁴³

Mediation and ADR

In Switzerland, large commercial disputes are typically resolved through litigation or arbitration. Alternative dispute resolution (“ADR”) methods play a limited role, though it can be stated that mediation has gained popularity in recent years. This trend is reflected in the adoption of the Swiss Rules on Commercial Mediation in 2021 as well as an increasing number of organisations offering mediation services and training.

During litigation, courts are free to facilitate settlements or to encourage parties to resort to mediation. At any point in court proceedings, the parties can jointly agree to initiate mediation, which leads to a suspension of court proceedings.⁴⁴ If the parties reach a mediated settlement during proceedings, the court may confirm it with the effect that the settlement becomes enforceable like a court judgment. However, settlements reached through mediation outside of court proceedings cannot be confirmed by the court.

From 1 January 2025, conciliation authorities can propose judgments in disputes involving amounts under CHF 10,000.⁴⁵ Additionally, voluntary conciliation is newly also available for disputes brought before the commercial courts.

Regulatory investigations

Regulatory investigations in Switzerland are as such not particularly regulated by specific law and as a result, various sector-specific regulations in criminal, corporate, employment and data protection law

apply. From a practical perspective, regulatory investigations in the fields of antitrust and competition as well as the financial and insurance industry are among the most significant. The Swiss Financial Market Supervisory Authority (“**FINMA**”) is the primary regulator in the financial and insurance sector, but similar processes exist in other regulated industries.

Investigations conducted by FINMA are typically triggered by information about irregularities or potential violations, which may come from supervisory activities, reports by other authorities, or complaints from clients and investors. The process usually begins with a preliminary investigation to determine whether there is sufficient evidence of a breach. FINMA thereby assesses whether enforcement proceedings are necessary or whether the matter can be addressed through standard supervisory measures. During an investigation, authorities may request documents, conduct interviews, and appoint independent experts to clarify facts relevant to supervision. If the investigation reveals serious misconduct, FINMA can initiate formal enforcement proceedings, which may result in sanctions such as fines, disgorgement of profits, or even revocation of licences. Investigations can target both companies and individuals. In the financial sector, providing false information to FINMA can result in criminal penalties for individuals and severe administrative sanctions for entities, including loss of business licences. If evidence of criminal conduct is uncovered, authorities are required to refer the matter to criminal prosecutors, leading to possible parallel administrative and criminal proceedings.



Endnotes

- 1 See <https://tradingeconomics.com/switzerland/corruption-rank> (last visited 13 June 2025).
- 2 Articles 47–51 CPC.
- 3 Article 167a CPC.
- 4 See in detail Hasenböhler F./Yañez S., *Das Beweisrecht der ZPO*, Volume 2, paras 5.167 *et seq.*; *cf.*, for example, Commercial Court of the Canton of Zurich, 15 May 2014 (HE130354), cons. 3.4.3; Commercial Court of the Canton of Zurich, 22 August 2024 (HG210264), cons. 1.4.
- 5 Article 158 CPC.
- 6 Article 958f CO.
- 7 Article 168(1) CPC; DFT 141 III 433 cons. 2.5.1.
- 8 Revised Article 177 CPC.
- 9 Article 106(1) and (2) CPC.
- 10 Article 96 CPC.
- 11 Article 102 CPC.
- 12 Article 99(1) CPC.
- 13 DFT 131 I 223.
- 14 DFT 2C_814/2014 cons. 4.3.1.
- 15 DFT 143 III 600 cons. 2.7.5.
- 16 See Swiss National Council, Spring Session 2025, 17 March 2025, (21.082) available at: <https://www.parlament.ch/de/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=67459> (last visited 1 July 2025).
- 17 Article 71 CPC.
- 18 Article 89 CPC.
- 19 DFT 4A_43/2020, dated 16 July 2020; see also Commercial Court of the Canton of Zurich, 6 December 2019 (HG170257) (first-instance decision).

- 20 Heisch Martin, *Abtretungsmodelle im Zivilprozess: Die gebündelte Anspruchsdurchsetzung mittels Inkassoession, objektiver Klagenhäufung und Prozessfinanzierung*, Zurich/Basel/Geneva 2022, 13 *et seq.*
- 21 Article 261(1) CPC.
- 22 Article 262 CPC.
- 23 Article 265(1) and (2) CPC.
- 24 Article 271(1) DEBA.
- 25 Article 271(1) DEBA.
- 26 Article 271(1)(4) DEBA.
- 27 Article 271(1)(6) DEBA.
- 28 Articles 335 *et seqq.* CPC.
- 29 Article 81 DEBA.
- 30 Article 81 DEBA and Article 83 DEBA.
- 31 Article 79 DEBA.
- 32 Article 88 DEBA.
- 33 Article 25(a) PILA.
- 34 Article 26(a) PILA.
- 35 Article 25(b) PILA.
- 36 Article 25(c) PILA.
- 37 Annex V Lugano Convention.
- 38 Article 129(2)(b) CPC.
- 39 Canton of Zurich, Department of Justice and Home Affairs, Preliminary Draft with Explanatory Report of 9 September 2024, available at: [https://www.notes.zh.ch/sk/VNL/vnl.nsf/vw-alldocuments/256839C2A2044654C1258B940052D92A/\\$File/JI%20-%20%C3%84nderung%20GOG%20\(ZICC%20und%20weiteres\)%20-%20Vorentwurf%20mit%20erl%C3%A4u.pdf](https://www.notes.zh.ch/sk/VNL/vnl.nsf/vw-alldocuments/256839C2A2044654C1258B940052D92A/$File/JI%20-%20%C3%84nderung%20GOG%20(ZICC%20und%20weiteres)%20-%20Vorentwurf%20mit%20erl%C3%A4u.pdf) (last visited 26 June 2025).
- 40 Article 178(1) PILA; Article 358 CCP.
- 41 Girsberger Daniel, Voser Nathalie, *International Arbitration*, 5th ed., Zurich/Geneva 2024, para. 472.
- 42 Article 190(2) PILA.
- 43 Article 360(e) and (f) CPC.
- 44 Article 214 CPC.
- 45 Article 210(1)(c) CPC.

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