

SWITZERLAND

— A Location for International Arbitration

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● meyerlustenberger has offices in Zurich, Zug and Geneva, the most important Swiss business centres. The law firm was established in 1975 and, today, with about 50 attorneys-at-law, tax experts and notaries public, meyerlustenberger is one of the leading international law firms in Switzerland.

Dr. Arroyo's practice focuses on international commercial arbitration and litigation, in which areas he publishes extensively. He is the co-author of "Arbitration in Switzerland – The Practitioner's Guide", the most comprehensive treatise on international arbitration in Switzerland (published by Wolters Kluwer in 2012).

WHERE DO MOST INTERNATIONAL CASES IN SWITZERLAND COME FROM AND WHY?

The vast majority of cases concern disputes on international commercial contracts between two (or more) non-Swiss companies. For the reasons set forth below, Switzerland is (and always has been) one of the most often chosen arbitration venues.

Moreover, Swiss substantive law is (along with English law) the most often chosen law in international commercial contracts. As a result, it makes sense to choose Switzerland as seat of the arbitration since the arbitrators deciding the dispute and the parties' counsel will necessarily have to be familiar with Swiss law. In other words, Swiss practitioners will have to be retained – both as arbitrators and as counsel to the parties.

WHY HAS THE SWISS BUSINESS COMMUNITY ALWAYS BEEN AND REMAINS AMONG THE PRIMARY USERS OF ARBITRATION?

Arbitration has a long-standing tradition in Switzerland. A reason for this tradition is that arbitration is generally faster than state court litigation. In other words, a final and binding decision (the final award) will be issued quicker, while in state court proceedings the possibility to challenge the decision of any (cantonal) civil court before two instances (first, before the high court of the canton at issue, and second, before the Swiss Federal Supreme Court) will render the dispute resolution process longer.

This is also due to the fact that the merits of the case can be reopened in appellate proceedings following state court litigation, while this is virtually impossible in arbitrations since the Supreme Court may only set aside an award if the award is incompatible with public policy (ordre public), which will hardly ever be the case. Importantly, an arbitral award rendered in Switzerland can only be challenged on very limited grounds before the Supreme Court. Furthermore, the Court adopts a very restrictive approach, and in

practice only serious procedural irregularities may lead to the setting aside of the award, with solely 6.5 % of all challenges being successful. Besides, the challenge proceedings, on average, do not last longer than four months, which is unparalleled internationally. In addition, the parties may appoint arbitrators with expertise in the given field (e.g., construction, corporate, IP or insurance law), whereas the state court judge dealing with the case might not have any expertise at all. Arbitration proceedings are private, i.e. they are – as opposed to state court proceedings – not public.

The parties may also ensure an absolute confidentiality of the arbitration, including the final award, by means of an express agreement. In addition, any award issued in an international arbitration having its seat in Switzerland is enforceable as good as worldwide based on the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, which today counts 146 signatory states.

“All this makes arbitration be much more attractive than state court litigation. Unsurprisingly, statistics reveal that the higher the amount at stake, the more likely it is that potential disputes will be referred to arbitration.”

SWITZERLAND IS AN IDEAL LOCATION FOR SETTLING INTERNATIONAL BUSINESS DISPUTES; CAN YOU PLEASE EXPLAIN WHAT FACTORS HAVE CONTRIBUTED TO THIS?

To start with, there is a significant amount of arbitration practitioners in Switzerland who can act both as arbitrators and as counsel to parties. The statistically proven fact that in ICC arbitrations Switzerland is the most often chosen seat of arbitration and the country with the largest amount of both arbitrators and counsel speaks for itself. Consequently, parties do have an intrinsic self-interest in coming to Switzerland, particularly given that Swiss substantive law, as mentioned, is one of the two most often chosen laws to govern international commercial contracts. The statutory framework on international arbitration (i.e., Chapter 12 of the Swiss Private International Law Statute) is arbitration-friendly in many ways. In particular,

state court interference is reduced to a minimum and the setting aside of an award is limited to a handful of grounds.

Additionally, the Swiss Federal Supreme Court sets a very high threshold when deciding on setting aside applications. At the same time, state court intervention in support of arbitration is available (e.g., when constituting the arbitral tribunal, or when interim measures of protection are required). Switzerland's ideal location in the heart of Europe, with an excellent infrastructure and outstanding facilities to hold hearings, as well as the country's political and economic stability are further reasons for the country's role as a leading arbitration venue.

ALTHOUGH STILL CONSIDERED A LESS EXPENSIVE MEANS OF DISPUTE RESOLUTION, THERE IS GROWING CONCERN THAT ARBITRATION PROCEEDINGS ARE BECOMING MORE COSTLY BOTH IN TIME AND MONEY, WHAT ARE YOUR THOUGHTS?

The concern is justified. However, there are a number of possibilities and techniques to save time and costs in arbitration. For example, if the amount in dispute is not higher than approximately 1 million US dollars, it seems advisable to only have a sole arbitrator (not three arbitrators) decide the dispute. It goes without saying that this will significantly reduce the overall costs. A further measure is to choose the Swiss Rules of International Arbitration to govern the arbitral proceedings, which provide for a quicker and less costly procedure than other institutional rules of arbitration.

In closing, it is worth noting that the above-mentioned treatise (Arbitration in Switzerland – The Practitioner's Guide), to be published in the second half of 2012, will include an entire chapter on how to save time and costs in arbitration, with multiple practical tips and techniques for parties to consider and adopt.



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