

Arbitration in Switzerland
The Practitioner's Guide

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Foreword

It is an honor for me to introduce you to this new *Practitioners' Guide to Arbitration in Switzerland*. In fact, the title of this treatise is slightly understating its content: as far as I can see, this is the most comprehensive and certainly most up-to-date overview of the law and practice of arbitration in Switzerland as a whole. If one considers completeness alone to be the decisive feature of a publication, this one certainly scores high; but this is not all this new book has to offer.

When the editor, Manuel Arroyo, discussed this project with me a few years ago, I congratulated him on his courage, but also issued a warning: it would be difficult to manage such an ambitious publication, involving so many authors, and to bring all the intended contributors in line. In spite of my cautionary remarks, Manuel decided to go forward, and the result proves him right.

This book assembles the elite of the younger generation of Swiss arbitration practitioners, representing all leading Swiss arbitration firms. They have done their utmost to share their collective wisdom with us, and in my view they have succeeded. The contributions find the right mix between theoretical and legal background on the one hand and the more practical aspects of arbitrating on the other. This book will be a valuable tool for all practitioners as a first point of reference whenever arbitration related issues pop up; in addition, academics will appreciate it as more than just a starting point in their analysis of legal issues in arbitration.

I am sure you will find this publication to be a valuable tool in your everyday arbitration work. Moreover, it is an excellent introduction for all younger lawyers who consider a career in arbitration, and a helpful source of guidance for all those colleagues who only deal with arbitration from time to time.

I would like to thank Manuel and all his colleagues for putting in the effort and hard work to put together this impressive collection of contributions, and I look forward to use the Guide (and its subsequent editions) in many years to come.

Daniel Hochstrasser
Bär & Karrer AG, Zurich

Preface

Written by Swiss arbitration practitioners for all practitioners, this treatise provides all users of arbitration (parties, attorneys-at-law, in-house counsel, arbitrators, arbitral institutions, etc.) with a comprehensive and detailed overview of international arbitration in Switzerland.

The (achieved) goal was to publish an all-embracing treatise on international arbitration in Switzerland, including in-depth analysis of the different types of arbitration, a commentary on the most relevant sets of arbitration rules, the legal framework within which such arbitrations are conducted, and various special topics that regularly come into play.

Countless references to the relevant Supreme Court case law, to lower court decisions, to arbitral awards and to the views of legal commentators form the basis of the guidance provided in the treatise, which can proudly be considered the most extensive work on international arbitration in Switzerland, and which is structured as follows:

Following the general introduction on Switzerland as a traditional and leading arbitration venue (Chapter 1), an article-by-article commentary on Chapter 12 of the *Swiss Private International Law Statute* focuses on the provisions of the *lex arbitri* (Chapter 2). Subsequently, both the revised 2012 *Swiss Rules of International Arbitration* (Chapter 3) and the revised 2012 *International Chamber of Commerce (ICC) Rules of Arbitration* (Chapter 4) are commented on an article-by-article basis.

Chapter 5 is dedicated to *Sports Arbitration* and comprises the first ever article-by-article commentary on the *Court of Arbitration for Sport (CAS) Procedural Rules* as in force since 1 March 2013.

The subsequent chapters contain a detailed analysis of *Ad hoc Arbitration* (Chapter 6), *IP & IT Arbitration* (Chapter 7), *Construction Arbitration* (Chapter 8), *Investment Arbitration* (Chapter 9) and *Arbitrating Trust Disputes* (Chapter 10). Chapter 11 in turn deals with the possibility of requesting a *Revision of Awards*, and Chapter 12 addresses the prerequisites for *Recognition and Enforcements of Awards*.

Chapter 13 closes the treatise with a series of *Special Topics* on (i) *Multi-Party Arbitrations*; (ii) *Confidentiality of Arbitration*; (iii) *Interim Measures*; (iv) *Costs in International Arbitration*; (v) *Saving Costs and Time in Arbitration*; (vi) *Parallel Proceedings and Lis Pendens*; (vii) *Rights and Duties of Arbitrators*; (viii) *Selection and Appointment of Arbitrators*; (ix) *Interpreting and Supplementing the Applicable National Law and the Terms of the Contract by General Contract Principles*; (x) *Multi-tiered and Hybrid Arbitration Clauses – especially Med-Arb and Arb-Med Clauses*; (xi) *Choice of Law Clauses in Arbitration Agreements*; (xii) *Damages for Breach of Arbitration Agreements*; and (xiii) *Penalty Clauses in Arbitration Agreements*.

In closing, the editor wishes to thank all authors for their diligent and most appreciated co-operation, especially with regard to the multiple amendments of the commentaries on the Swiss Rules, the ICC Rules and the CAS Rules, which were all revised during the project and required great efforts.

Manuel Arroyo
Zurich, August 2013

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