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Switzerland
International Arbitration

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Switzerland.

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Switzerland: International Arbitration

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

Swiss law differentiates between domestic and international arbitration, providing distinct sets of rules for each.

Part 3 of the Swiss Civil Procedure Code (**CPC**) governs domestic arbitration and applies where all parties to the arbitration agreement had their domicile or permanent residence in Switzerland at the time it was concluded.

Chapter 12 of the Swiss Private International Law Act (**PILA**) applies to international arbitration, i.e., where at least one of the parties did not have its domicile or permanent residence in Switzerland at the time the arbitration agreement was concluded.

The parties to a domestic arbitration can decide to opt out of the provisions of the CPC and apply the PILA instead. The reverse is also possible (see Article 353(2) CPC; Article 176(2) PILA).

Both domestic and international arbitrations are subject to mandatory rules, e.g. with respect to matters relating to (i) arbitrability (Article 177 PILA/Article 353 CPC), (ii) challenge of arbitrators on the grounds of impartiality and/or independence (Article 180(1)(c) PILA/Article 367(1)(c) CPC), (iii) *lis pendens* (Article 181 PILA/Article 372 CPC), (iv) equal treatment of the parties and the right to be heard (Article 182(3) PILA/Article 373(4) CPC), (v) judicial assistance by state courts (Article 185 PILA/Article 375(2) CPC), (vi) the setting-aside authority of the Swiss Federal Tribunal (Article 389 CPC/not mandatory under the PILA if all parties are based abroad according to Article 192(1) PILA).

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Switzerland is a signatory of the New York Convention of 1958 (the **New York Convention**) which entered into force for Switzerland on 30 August 1965. Upon ratification, Switzerland had made a reciprocity reservation, which was later withdrawn on 23 April 1993.

3. What other arbitration-related treaties and conventions is your country a party to?

Switzerland ratified the Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 (yet both ceased to have effect between contracting States of the New York Convention the moment contracting States became bound by the New York Convention). Switzerland is also a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (the **ICSID Convention**) and to the Energy Charter Treaty which entered into force in 1998. It has however not ratified the European Convention on International Commercial Arbitration of 1961.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

Despite the proximity in time between the PILA, which came into effect in 1989, and the UNCITRAL Model Law of 1985, the PILA is not based on the latter. However, the wording of some provisions in the PILA suggests that it was influenced also by the UNCITRAL Model Law. Both adopt a pro-arbitration approach, but Swiss law achieves this with much less dense wording while maintaining its effectiveness. The PILA has stood the test of time and was revised only after more than 30 years, undergoing only minor adjustments.

While the UNCITRAL Model Law and the PILA share many similarities and are based on the same core principles, there are some differences. For instance, the UNCITRAL Model Law does not define which disputes are arbitrable, whereas Article 177(1) PILA provides that any claim involving an economic interest may be submitted to arbitration.

Another difference is that the PILA embodies in its Article 178(2) PILA the *in favorem validatis* principle which provides that the arbitration agreement will be valid if it conforms with one of three different laws (see Question 8).

5. Are there any impending plans to reform the arbitration laws in your country?

On 1 January 2021, a revision of Chapter 12 of the PILA entered into force. Overall, the amendments did not constitute a major upheaval of the PILA but were made with the overall intention to maintain and strengthen Switzerland's attractiveness as a leading centre for international arbitration.

The goals of this reform were to (i) codify established Swiss arbitration case law from the Swiss Federal Tribunal, (ii) modernise Chapter 12 of the PILA with new features and reinforce Switzerland's arbitration-friendly judicial regime and (iii) further enhance the principle of party autonomy.

For example, under the revised set of rules, the parties can now file submissions before the Swiss Federal Tribunal in English and Swiss courts can provide assistance (e.g. provisional and protective measures or the taking of evidence) to foreign arbitral tribunals and parties in foreign arbitral proceedings. Another relevant modification was the codification of how an arbitral tribunal's jurisdiction can derive from an arbitration clause found in a unilateral act (will, foundation charter, trust deed or articles of association) as well as the Swiss Federal Tribunal's practice of allowing parties to request the revision of an arbitral award.

Following a reform of the Swiss Code of Obligations (the **CO**) which entered into force on 1 January 2023, Swiss corporations can include arbitration clauses in their corporate bylaws for corporate law disputes, pursuant to the newly introduced Article 697n CO. According to this provision, the arbitration clause is binding on the company, the corporate bodies of the company, the members of the corporate bodies and the shareholders unless stated otherwise. For any corporate disputes falling under such category, the arbitration must have its seat in Switzerland and must be governed by the provisions on domestic arbitration (Part 3 of the CPC).

On 1 January 2025, a reform of the CPC will come into effect, introducing amendments that will also affect arbitration. Indeed, as per the revised text of Article 251a CPC, the cantons may provide that upon joint request of the parties certain state court proceedings related to arbitration (e.g. appointment of the member(s) of the arbitral tribunal, recognition and enforcement of foreign arbitral awards) shall be conducted in English, provided that English was used in the arbitration agreement or in the arbitration proceedings.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The leading arbitral institution in Switzerland is the Swiss Arbitration Centre (the **Centre**).

Created in 2021, the Centre replaced the former Swiss Chambers' Arbitration Institution (**SCAI**), under a new brand and in collaboration with the Swiss Arbitration Association (**ASA**).

The Centre administers proceedings under the Swiss Rules of International Arbitration (the **Swiss Rules**), which were first enacted on 1 January 2004. The current version of the Swiss Rules entered into force on 1 June 2021. The Centre also provides mediation services under the Swiss Rules of Mediation. These rules were recently amended and took effect on 1 June 2021.

The World Intellectual Property Organization (**WIPO**), based in Geneva, established the WIPO Arbitration and Mediation Center in 1994, to promote the resolution of intellectual property and technology disputes through arbitration, mediation and expert determination. The latest version of its Arbitration Rules entered into force on 1 July 2021. The WIPO Arbitration and Mediation Centre has dealt mainly with IP disputes in relation to, for example, patent and software licenses, trademarks and patent infringement. It also provides services in relation to domain name disputes.

Finally, the Court of Arbitration for Sport (**CAS**), located in Lausanne, is considered the world's arbitration institution for sports-related disputes and has its own arbitration and mediation rules. Procedures at CAS typically involve in appeal proceedings challenges against sports-related legal measures imposed by federations, such as disciplinary sanctions, financial claims, fines for rule violations, training compensation, or solidarity payments, and in ordinary proceedings sports-related disputes subject to CAS' jurisdiction.

7. Is there a specialist arbitration court in your country?

Switzerland does not have a court specifically dedicated to arbitration. However, setting aside proceedings for awards issued in international arbitrations are handled directly by the Swiss Federal Tribunal, which is recognized for the high quality of its decisions, its pro-arbitration stance and its time efficiency.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

On a formal basis, Article 178(1) PILA requires that an arbitration agreement be made in writing or communicated by any means that allows it to be evidenced by text, e.g. e-mail. Signature is not a requirement for its validity.

On a substantial basis, Swiss law adopts an in *favorem validatis* approach, according to which an arbitration agreement is valid if it complies with any of the following laws: (i) the law chosen by the parties to specifically govern the arbitration agreement (which is very rarely chosen), (ii) the law governing the subject matter of the dispute (in particular the law applicable to the contract); (iii) or Swiss law.

The conditions mentioned above are also applicable to arbitration agreements included in articles of association or other unilateral documents (such as wills, foundation charters or trust deeds), as per Article 178(4) PILA.

9. Are arbitration clauses considered separable from the main contract?

Yes. Swiss law recognizes the principle of separability, according to which the validity of the arbitration agreement can be and is to be assessed separately from the validity of the main contract. This is embodied in Article 178(3) PILA.

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

Yes. According to Article 178(2) PILA, an arbitration agreement is valid if it conforms either (i) to the law chosen by the parties to govern the arbitration agreement, (ii) to the law governing the subject-matter of the dispute, in particular the law governing the main contract, or (iii) to Swiss law.

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

The only specific statutory provision in this context was introduced in 2021 through the PILA reform. Article 179(5) PILA provides that the court may appoint all the members of the arbitral tribunal in multi-party arbitrations. As explained in Question 17, the purpose of this provision is to avoid an imbalance between the parties, particularly when one side to the arbitration is composed of multiple parties which cannot agree on the appointment of a joint co-arbitrator.

This rule, however, is not a new feature, as it has been incorporated by major arbitral institutions, including the Swiss Arbitration Centre (Article 11(5) of the Swiss Rules).

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

The principle of privity of contract by which the arbitration clause binds only the parties that have agreed to it is well established under Swiss law. However, non-signatories can, in specific circumstances, be compelled to arbitrate or may rely on the arbitration agreement to initiate arbitration. This may occur through the application of contract or corporate law principles such as e.g. agency, assignment, subrogation, third-party beneficiary or succession. If no principle is applicable, it is necessary to examine whether the non-signatory party implicitly consented to the arbitration agreement, for instance, through involvement in the negotiation, conclusion, performance or termination of the contract. Additionally, a non-signatory may be estopped from arguing that it is not a party to the arbitration clause, based on the principle of good faith (*venire contra factum proprium*).

Accordingly, the non-signatories will be part of the arbitration proceedings because they have become true parties to the arbitration agreement, either by agreeing to it or by replacing the original signatories. In Switzerland, the mere fact that two companies share a corporate link or belong to the same group is not, in itself, sufficient grounds for extending the arbitration agreement (what is known as the group of companies doctrine). The Swiss Federal Tribunal's understanding regarding non-signatories has been consistent for a long time and this position has recently been reaffirmed (Decisions 4A_144/2023, 4A_146/2023 and 4A_148/2023, all dated 4 September 2023).

The form requirement of Article 178(1) PILA does not prevent the extension of the arbitration agreement to

third parties, provided that the original parties complied with it, according to established case law of the Swiss Federal Tribunal (DFT 129 III 727).

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

The PILA allows for a wide range of disputes to be considered arbitrable. According to Article 177(1) PILA, any claim involving an economic interest may be submitted to arbitration. Accordingly, very few disputes would not fall within this scope.

Under the CPC, arbitrability is defined slightly differently, in that any dispute with respect to claims over which a party may dispose freely is arbitrable.

There are only a few fields that are not subject to arbitration in Switzerland: in particular, family law status (divorce, separation, adoption, etc.) and some areas of debt enforcement law (actions concerning the freezing of assets, debt recovery or the opening of bankruptcy proceedings). While arbitration of labour law and residential tenancy law disputes is not excluded *per se*, certain restrictions apply, but in principle only in domestic arbitration.

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

When the parties have not expressly agreed upon a determined law to specifically govern the arbitration agreement, courts and arbitral tribunals worldwide tend to apply either the law agreed to govern the underlying agreement or the law of the seat. In Switzerland, however, this is rarely an issue given the *in favorem validatis* principle set forth in Article 178(2) PILA.

According to this rule, the arbitration agreement is valid if it is in accordance with any of the following laws: (i) the law chosen by the parties to govern the arbitration agreement itself, (ii) the law governing the subject matter of the dispute (in particular the law applicable to the contract), or (iii) Swiss law, which is the law of the seat of the arbitration. Notably, there is no hierarchy between these three laws as already decided by the Swiss Federal Tribunal.

Thus, the search for an implicit intent of the parties regarding the law applicable to the arbitration clause becomes practically irrelevant, as it does not matter whether the parties intended to apply the law of the seat (Switzerland) or the law governing the contract to the arbitration clause. Only in a very exceptional case would the parties argue an implicit intent to apply a law to the arbitration clause other than these.

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

Under Swiss law, the parties have great flexibility in selecting the law applicable to the merits of the dispute. The parties may also agree on the application of non-national rules of law (such as the Unidroit Principles of International Commercial Contracts or the *lex mercatoria*). In the absence of such a choice, the arbitral tribunal will apply the law which has the closest connection with the case (Article 187(1) PILA).

The parties may authorise the arbitral tribunal to decide *ex aequo et bono* (Article 187(2) PILA).

While the PILA contains a detailed set of conflicts of law rules, these rules are applicable in state court proceedings only, but not in arbitration proceedings.

16. In your country, are there any restrictions in the appointment of arbitrators?

The PILA does not provide any restriction on the appointment of arbitrators but provides that parties to an arbitration can challenge the arbitrator if circumstances exist that give rise to legitimate doubts as to his or her independence or impartiality (Article 180 PILA).

The IBA Guidelines on Conflict of Interest in International Arbitration are widely accepted in Switzerland and are used (as a yardstick and not as binding rules) by both the Swiss Arbitration Centre and the Swiss Federal Tribunal (e.g. in the recent decision 4A_288/2023 of 11 June 2024).

Unlike the rule set out in Article 13(5) of the ICC Rules, the Swiss Rules do not impose any restrictions on the nationality of arbitrators, providing the institution with greater flexibility to appoint sole arbitrators or presidents of the same nationality as the parties.

17. Are there any default requirements as to the selection of a tribunal?

The default procedure in the selection of the arbitral

tribunal is contained in Article 179 PILA.

In particular, this provision sets forth that the arbitral tribunal shall comprise three members unless the parties agree otherwise. Each party shall appoint a co-arbitrator, who together shall appoint the president of the arbitral tribunal. The state court at the seat of the arbitration has the competence to appoint or replace an arbitrator (Article 179(2) PILA). Upon request of one party, the state court shall take the necessary steps to constitute the arbitral tribunal, in case the parties or the existing arbitrators fail to fulfil their obligations within 30 days of being requested to do so (Article 179(4) PILA). If the parties have not agreed on a seat or only agreed that the seat of the arbitral tribunal be in Switzerland, any Swiss state court can be applied to.

In case of multi-party disputes, the state court may appoint the entire arbitral tribunal (Article 179(5) PILA). This will usually be the case when one of the sides to the dispute is constituted by more than one party and they do not agree upon the nomination of a joint arbitrator. Hence, the state court may appoint all members of the arbitral tribunal to prevent an imbalance between the parties, which will be the case if only one of the sides is able to designate a co-arbitrator.

Lastly, a person requested to act as arbitrator shall be independent and impartial and shall disclose any circumstance that might give rise to legitimate doubts as to his or her independence or impartiality. This obligation applies throughout the entire proceedings (Article 179(6) PILA).

18. Can the local courts intervene in the selection of arbitrators? If so, how?

The local court might intervene where the parties cannot reach an agreement or if the members of the arbitral tribunal cannot be appointed or replaced for other reasons. In this case, one of the parties can request the court's assistance (Article 179(2) and (4) PILA). The court shall grant such request, unless a summary examination reveals that there is no existing arbitration agreement (Article 179(3) PILA).

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

The grounds on which a challenge of an arbitrator is admissible are set out in Article 180 PILA, which is applicable in case the parties have not agreed on a specific challenge procedure (typically by referring to arbitration rules providing for such challenge procedure).

According to Article 180 PILA, arbitrators may be challenged in the following cases: (i) if they lack the qualifications agreed by the parties, (ii) in the event of a ground for challenge as provided under the arbitration rules chosen by the parties, or (iii) if circumstances exist that give rise to legitimate doubt as to their independence or impartiality .

Article 180a PILA sets out the challenge procedure as follows:

- a written notice of challenge shall be given to the challenged member of the arbitral tribunal and the other members within 30 days from the moment the challenging party becomes aware of the grounds for the challenge or could have become aware thereof had it exercised due diligence.
- the challenging party may request the state court to render a decision on the challenged member within 30 days of the filing of the written notice to the challenged arbitrator. The state court's decision is final.
- when the challenge procedure is ongoing, the arbitral tribunal can still continue the proceedings without excluding the challenged member, until a decision is rendered, unless the parties have agreed otherwise.

Article 180b PILA provides that any member of the arbitral tribunal can be removed by agreement of the parties and that a party may request the state court to remove an arbitrator if he or she is unable to carry out his or her duties within a reasonable time or due care.

20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators, including the duty of disclosure?

As already stated in Question 16, the IBA Guidelines on Conflicts of Interest in International Arbitration are a useful tool for the determination of the independence and impartiality of arbitrators, with the Swiss Federal Tribunal having expressly referred to these guidelines.

Notably, the parties cannot rely only on the duty of disclosure contained in the IBA Guidelines on Conflicts of Interest in International Arbitration. Indeed, as stated in a recent decision by the Swiss Federal Tribunal (Decision 4A_13/2023 of 11 September 2023), the parties have the duty to undertake additional research, including on the

Internet, in order to ascertain whether an arbitrator has provided sufficient guarantee of independence and impartiality. The Swiss Federal Tribunal clarified that it is difficult to define the scope of the parties' duty in identifying elements which may give rise to doubt and held that a case-by case analysis shall be made, based on the factual circumstances. In any case, the Swiss Federal Tribunal affirmed that its examination shall be limited to the grounds for challenge that have already been raised during the arbitration proceedings.

The Swiss Federal Tribunal has also recently determined that any grounds for lack of independence and impartiality of an arbitrator must have existed during the arbitration proceedings and in any event prior to the rendering of an award for a setting-aside request of such arbitral award to succeed before the Swiss Federal Tribunal (Decisions 4A_288/2023 and 4A_572/2023, both of 11 June 2024).

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

A truncated arbitral tribunal refers to a tribunal in which at least one of its members is no longer able to serve, whether due to resignation or another cause that prevents them from fulfilling their role (such as illness or death). The arbitral tribunal is therefore incomplete.

The situation of a truncated arbitral tribunal gives rise to the question whether such arbitral tribunal is still regularly constituted. According to Article 190(2)(a) PILA, an arbitral award rendered by an improperly constituted tribunal is subject to annulment by the Swiss Federal Tribunal.

There is no provision under Swiss law specifically addressing truncated tribunals. With respect to case law, the Swiss Federal Tribunal has already held that the proceedings could not be continued by the remaining members of the tribunal until a new arbitrator has been appointed, unless the parties have agreed otherwise (Decisions A_386/2010 and 4A_420/2010, both of 3 January 2011).

A similar situation arises when one of the members of the arbitral tribunal refuses to perform essential duties, such as attending hearings or participating in deliberations. In a decision of 2002, the Swiss Federal Tribunal found that, in case an arbitrator refuses to participate in the deliberations or to vote, the other arbitrators can continue the deliberations and render an award, provided that the refusing arbitrator had the opportunity to participate at all times (DFT 128 III 234). This decision is in line with Article 382(2) CPC, applicable to domestic arbitrations. This article sets forth that if an arbitrator refuses to participate in a deliberation or decision, the arbitral tribunal can proceed without such member, unless the parties have agreed otherwise.

As regards international arbitrations, Article 189(2) PILA provides that in the absence of specific rules agreed upon by parties on the procedure and form of an arbitral award, the majority of the arbitral tribunal may render an award, and if no majority is possible, the president alone may render the award. The same solution is found in Article 33(1) of the Swiss Rules.

22. Are arbitrators immune from liability?

Neither the PILA nor the CPC contain a provision on the arbitrator's liability. It is the prevailing view that, in the interest of the integrity of the arbitration, arbitrators should be immune from liability to the extent permitted by law. Under Swiss law, liability can be excluded by agreement, except for liability based on gross negligence or unlawful intent (Article 100(1) CO). This is reflected in Article 45(1) of the Swiss Rules, which provides that arbitrators are immune for any act or omission in connection with an arbitration proceeding conducted under the Swiss Rules, unless such act or omission is shown to constitute gross negligence or unlawful intent.

In line with these principles, it is generally accepted that an arbitrator may indeed be liable for damages for breach of his or her duties. In 2018, the Swiss Federal Tribunal upheld a decision which held an arbitrator liable for damages because he had failed to render the award within the agreed time, which had resulted in the setting aside of the award (DFT 140 III 75).

23. Is the principle of competence-competence recognised in your country?

Article 186(1) PILA sets forth the principle of competence-competence, under which an arbitral tribunal shall decide on its own jurisdiction, while Article 186(3) PILA provides that the arbitral tribunal can do so by means of an interim award. And Article 186(1)*bis* PILA provides that the arbitral tribunal shall decide on its jurisdiction without regard to any action on the same subject matter pending before a state court or another arbitral tribunal, unless there are substantial grounds for a stay of the proceedings (Article 186(1)*bis* PILA).

An arbitral tribunal's award on its jurisdiction can be set-

aside before the Swiss Federal Tribunal on the grounds that the arbitral tribunal has wrongly accepted or declined its jurisdiction (Article 190(2)(b) PILA). It is therefore not necessary to wait until the final award (Article 190(3) PILA).

24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

If action is brought before a state court in apparent breach of an arbitration agreement, as per Article 7 PILA, such court shall decline its jurisdiction, unless (i) the opposing party has not raised any plea of lack of jurisdiction of the state court, (ii) the court finds that the arbitration agreement is invalid, inoperable or incapable of being performed, or (iii) the arbitral tribunal cannot be constituted due to reasons clearly attributable to the opposing party.

25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

The PILA does not contain any provision dealing with defaulting parties. Such a situation is governed by the procedure determined by the parties or the arbitral tribunal as applicable to their dispute (Article 182 PILA). Any procedural provision is required to respect the parties' right to be heard and to be treated equally (Article 182(3) PILA).

With respect to institutional rules, Article 30(1) of the Swiss Rules provides that a respondent's failure to participate in the arbitration without showing sufficient cause for that does not constitute an obstacle to the continuation of the arbitration. Accordingly, the arbitration will proceed with or without the respondent's participation.

Local courts will not compel a party to arbitrate. Once a party is duly notified of the existence of the arbitration proceedings, it is up to that party to bear the consequences of its non-participation.

Even though a party may decide not to participate in the proceedings, it shall still be duly informed of every step and given the opportunity to comment.

Under Swiss arbitration law, the fact that respondent did not submit its defence does not lead automatically to the conclusion that the facts alleged by claimant are true.

26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

There is no provision in the PILA that addresses the issue of joinder and/or intervention. Yet commentators consider that intervention and joinder should be admissible as long as there is an arbitration agreement binding on all parties (the original parties and the third party). In this case, the arbitral tribunal may allow the joinder or intervention despite jurisdictional objections because the additional party is considered a genuine party to the arbitration agreement, just like the original parties.

This understanding is in accordance with the Swiss domestic arbitration law. Article 376(3) CPC provides that joinder and intervention are admissible only where an arbitration agreement exists between the original parties and the party to be added to the proceedings, i.e. where the consent requirement is fulfilled. Such intervention and joinder are also further subject to the arbitral tribunal's consent.

If all the parties agree to the joinder or intervention, then all parties will be consenting to the arbitration agreement. In this case, arbitrators are likely to agree to the joinder or intervention. However, the arbitral tribunal is not bound by such an agreement as it may still decide not to allow joinder and consolidation depending on the factual circumstances.

With respect to the Swiss Rules, their Article 6 addresses joinder and interventions. Before the constitution of the arbitral tribunal, claims against additional parties shall be made through a notice of claim submitted to the Secretariat of the Court of the Centre. The arbitration shall proceed even if there is a jurisdictional objection, except where the Centre finds that there is manifestly no arbitration agreement referring to the Swiss Rules or where the agreements are incompatible in case of a multi-contract arbitration. The Centre's decision to proceed with claims against or brought by the additional party is without prejudice to the arbitral tribunal's decision. In case of a request for joinder or intervention filed after the constitution of the arbitral tribunal, it is then for the arbitrators to decide on it.

The Swiss Rules also allow that a party participates in the arbitration in a capacity other than an additional party (e.g. *amicus curiae*). In this case, the arbitral tribunal shall decide on whether to permit such participation and on its

modalities after consulting with all parties and the third person.

27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

Article 183 PILA deals with requests for interim measures. The arbitral tribunal is authorised to grant provisional or conservative measures upon request of a party, unless the parties have agreed otherwise (Article 183(1) PILA). In Switzerland, there are no specific limitations on the types of interim or conservatory measures that may be issued in arbitration, allowing for a wide range of possibilities. These measures may, for instance, aim to prevent a party from breaching a contract by calling a bank guarantee or dissipating assets by selling specific shares. Interim measures can also ensure continued contract performance by ordering a party to continue delivering certain products. If deemed necessary, a party can request the state court's assistance to enforce such measures (Article 183(2) PILA). State court's assistance will also be provided even in case the seat of arbitration is outside the territory of Switzerland (Article 185a PILA, a provision newly introduced in 2021).

If the arbitral tribunal has not been constituted yet, a party may apply to state courts for interim measures. Once the arbitral tribunal has been constituted, the state courts remain competent to order interim measures (so that there is parallel jurisdiction of the arbitral tribunal and the state courts), unless the parties have agreed otherwise.

The Swiss Rules provide that, before the constitution of the arbitral tribunal, the request for interim measures can be submitted to an emergency arbitrator appointed by the institution (Article 43 of the Swiss Rules).

28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

Anti-suit and anti-arbitration injunctions are not expressly excluded under Swiss law. Nevertheless, such measures remain relatively uncommon, as arbitral tribunals seated in Switzerland tend to be reluctant to grant anti-suit injunctions.

To date, there has been no decision by a Swiss court issuing an anti-arbitration injunction, and it seems highly unlikely that a Swiss court would issue such a measure or enforce one.

29. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

There are no particular rules governing evidentiary matters under Swiss law and therefore the parties enjoy considerable freedom to set specific rules concerning the taking of evidence. In the absence of an agreement by the parties in this regard, it is for the arbitral tribunal to determine evidentiary matters (Article 182 PILA).

The arbitral tribunal (or a party with its consent) may request assistance of local courts if required, e.g. to hear a witness who is refusing to testify in arbitration proceedings (Article 184 PILA).

The state court shall apply its own law and on request, it may apply or take into account other procedural rules (Article 184(3) PILA).

In case the seat of arbitration is outside the territory of Switzerland, assistance of Swiss state courts may also be requested (Article 185a PILA).

30. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

The Swiss Federal Act on the Freedom of Movement for Lawyers provides the relevant professional rules which licensed Swiss lawyers must follow. Moreover, the Swiss Bar Association has codified a set of rules which shall be observed by its members. Key duties include the duty to carry out the profession with care and diligence, as well as the duty to remain independent and to avoid any conflicts of interest. These rules and professional standards therefore apply to both counsel and arbitrators, if the latter are also licensed Swiss lawyers.

Swiss law imposes certain restrictions on success fees. Under the applicable rules, Swiss lawyers may not validly agree on a pure contingency fee, as this is said to create a potential conflict of interests between lawyer and client that might undermine the lawyer's independence and duty to act solely in the client's best interests (See Question 41).

31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

There is no statutory provision under Swiss law imposing an express duty of confidentiality. Such an obligation is often found in the institutional rules agreed upon by the parties, e.g. Article 44 of the Swiss Rules. According to this provision, parties undertake to keep confidential all awards and orders as well as all materials submitted by another party during the arbitration proceedings, unless expressly agreed otherwise in writing.

Whether a general duty of confidentiality exists in the absence of an institutional rule remains unsettled in Swiss case law and literature. While there appears to be consensus that arbitrators assume a duty of confidentiality by accepting their mandate, the matter is more disputed as to whether the parties are under such an obligation. Some authors hold the view that the parties do indeed have a duty of confidentiality, basing their position on the legitimate expectations of the parties and the principle of good faith. However, other authors disagree and consider that there is no obligation where there is no specific provision or agreement to that effect.

32. How are the costs of arbitration proceedings estimated and allocated? Can pre- and post-award interest be included on the principal claim and costs incurred?

The PILA does not contain any specific provision regarding the determination and allocation of costs. In the absence of an agreement between the parties, the tribunal has considerable discretion to decide on costs, while observing any provisions set out in the applicable institutional rules, if any. In Switzerland, arbitrators often follow the "costs follow the event" rule, under which the costs are allocated to the parties in proportion to the success and failure of each party's respective claims and defences. These costs typically include arbitrators' fees, administrative fees of the arbitral institution, and the parties' expenses, such as legal fees, expert fees, and costs related to hearings.

From a Swiss law perspective, default interest on the principal amount is a matter of the law governing the merits of the dispute. In case Swiss law is the applicable substantive law, then pre- and post-award interest can be included on the principal claim.

With respect to costs, unless the parties have agreed otherwise, a party's claim for cost and compensation is governed by Swiss law (being the *lex arbitri*). While Swiss-seated tribunals would rarely grant pre-award interest on costs, post-award interest is common and can be claimed at the enforcement stage even if they have not been expressly awarded.

33. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

Article 189 PILA states that the award shall be rendered in conformity with the procedure and the form agreed by the parties. Unless the parties agree otherwise, the award shall be in writing, reasoned, dated and signed. In a recent case, the Swiss Federal Tribunal held that when an award is not reasoned in accordance with the parties'agreement, it cannot *de facto* analyse in challenge proceedings the grounds for challenge due to the complete lack of information in the award itself and must reject the challenge (DFT 149 III 338).

Article 190 PILA provides that the award is final and – therefore – enforceable from the moment of the notification of the award to the parties. The enforceability of the award is generally not suspended by a challenge aimed at annulling the award.

Domestic awards, i.e., awards rendered by a Swiss-seated arbitral tribunal will be recognized and enforced just as any Swiss state court judgment. With respect to awards rendered by an arbitral tribunal whose seat is outside of Switzerland, Article 194 PILA sets forth that such awards will be recognized and enforced in Switzerland in accordance with Article IV of the New York Convention.

Unless there are exceptional circumstances, there is generally no need to initiate separate proceedings for the recognition of the award and obtain a declaration of enforceability (*exequatur*), but the possibility exists. Rather, the recognition and enforceability of the award will normally be examined by the court as a preliminary question within the debt enforcement proceedings.

34. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

Both international and national arbitral awards are recognized and enforced in adversarial proceedings. Following the filing for the recognition or enforcement by

the applicant, the defendant is invited to submit an answer to the application. The first instance court's decision is subject to an appeal, as is the decision of the appellate court.

Despite the fact that both recognition and enforcement proceedings are dealt with in summary proceedings with limited grounds for objection and means of evidence, the time it takes to actually enforce an award is generally difficult to predict. It is not uncommon for this to take more than a year, and in the case of a recalcitrant debtor it may take considerably longer.

The award creditor may apply to the court for an attachment of the debtor's assets located in Switzerland on an *ex-parte* basis, if it can provide *prima facie* evidence of the existence of specific assets and their location.

35. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

Domestic awards are enforceable under the same rules as those applicable to state court decisions, in accordance with Articles 336 et seq. CPC. Unless the award must be considered null and void (because, e.g., the document presented lacks the constituent elements of an arbitral award), the debtor cannot raise any objections against the award as such at the enforcement stage.

Foreign arbitral awards are recognised under the New York Convention, in accordance with Article 194 PILA. As per Article IV(1) of the New York Convention, a party requesting the enforcement or the recognition of a foreign arbitral award shall submit (i) a duly authenticated original award or a duly certified copy thereof and (ii) the original of the arbitration agreement or a duly certified copy thereof.

Moreover, in accordance with Article IV(2) of the New York Convention, the filing of a certified translation of the aforementioned documents is required in case the award or the arbitration agreement is not in an official language of the country where the recognition or enforcement is sought.

The revised Article 251a CPC, which will enter into force on 1 January 2025, provides that each canton will have the possibility to provide that English be used as language of the procedure in certain proceedings, when it was used in the arbitration agreement or in the arbitration proceedings. It remains to be seen which cantons will make use of this possibility.

36. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

In accordance with Article V(2)(b) of the New York Convention, Swiss state courts may refuse the enforcement of an arbitral award that is contrary to public policy. In this respect, punitive damages are considered an issue, given that such damages may, depending on the circumstances of the case, be contrary to Swiss public policy (Decisions 4A_536/2016 of 26 June 2016 and 4A_540/2016 of 1 April 2016).

37. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

A challenge against an international arbitral award rendered in Switzerland must be submitted to the Swiss Federal Tribunal within 30 days of the notification of the award. Article 190(2) PILA sets forth the grounds based on which an award can be challenged: (i) irregular composition of the arbitral tribunal; (ii) incorrect decision on jurisdiction of the arbitral tribunal; (iii) the decision goes beyond the claims raised by the parties (*ultra petita*) or does not address one or more claims (*infra petita*); (iv) violation of equal treatment of the parties or their right to be heard; (v) violation of public policy.

Domestic arbitral awards can be challenged before the Swiss Federal Tribunal on two additional grounds, as per Article 393 CPC (which also includes the grounds set forth in Article 190 PILA), which are the following: (i) the award is arbitrary in its result, meaning that it is based on findings which are obviously contrary to the facts of the dispute, or because it constitutes an obvious violation of law or equity, and (ii) the costs and compensation fixed by the arbitral tribunal are manifestly excessive.

A request to the arbitral tribunal for correction (of typographical or accounting mistakes) or explanation of the award (in case it is unclear) or for a supplementary award (in case it failed to address claims) does not affect the 30-day deadline to challenge the award (Article 189a PILA / Article 388 CPC).

The Swiss Federal Tribunal is bound by the findings established during the arbitration proceedings. Before rendering the decision, the Swiss Federal Tribunal normally invites the defendant and the arbitral tribunal to

comment on the request for challenge.

In addition to the annulment proceedings, Article 190a PILA provides for the revision of an award. The grounds for a revision are limited and comprise: (i) the discovery of new, significant facts, or uncovered evidence which could not be produced in the earlier arbitration proceedings; (ii) the arbitral award has been influenced by a criminal offence and (iii) circumstances have been found after the issuance of the arbitral award, which give rise to legitimate doubt as to the arbitrator's independence or impartiality.

The request for revision shall be filed within 90 days of the discovery of the ground for revision. A revision cannot be requested after 10 years since the award has been rendered, except in case of a criminal offence.

38. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

If none of the parties has their domicile, habitual residence or seat in Switzerland, they may wholly or partly waive all appeals against arbitral awards (Article 192(1) PILA). The waiver may be contained in the arbitration agreement or in a subsequent written declaration of the parties. It must be made expressly. A simple reference to institutional arbitral rules providing for the finality of the award is not sufficient.

In any case, the parties cannot waive the right to a revision of the arbitral award on the ground that the award was influenced by a criminal offence.

39. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

As a general rule, an arbitral award only binds the parties to the arbitration proceedings. In case of partial or universal succession in rights (e.g., in the case of an assignment, corporate restructuring such as a merger), the award may bind a person who was not a party to the arbitration. In addition, if the award modifies or annuls a legal relationship or an obligation arising therefrom, the award will be binding not only upon the parties themselves, but also on any third party (e.g., if the arbitral tribunal, upon a claim by a shareholder, annuls the resolution of a shareholders' meeting, the award will be binding on all shareholders who did not participate in the proceedings).

Under very exceptional circumstances, a third-party may have the standing to challenge an award. For example, a third party may have an interest in setting aside an award if it was somehow impacted by the arbitrator's decision in a case where it should have been provided with an opportunity to participate in the proceedings but was not. This could be the case in an intra-corporate dispute where a shareholder was unaware of the proceedings despite having a right to be informed.

40. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

Third party funding is a matter which has not been regulated in Swiss law yet. Nevertheless, the Swiss Federal Tribunal has already confirmed its legality in decisions of 2004 and 2015 (respectively, DFT 131 I 223 and Decision 2C_814/2014 of 22 May 2015).

Swiss law does not provide for an obligation to disclose the existence and identity of a third-party funder, even though the legal doctrine in Switzerland partly supports such a mandatory disclosure.

While the Swiss Rules do not establish a duty to disclose either, the Centre published the Swiss Rules of International Arbitration Practice Note in March 2023, whose para. 100 provides that parties are expected to disclose the existence and identity of the third-party funder, so as to enable arbitrators to conduct a conflict check and ensure that the involvement of a third-party funder does not affect their independence and impartiality.

41. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

Under Swiss law, there is no statutory provision on emergency arbitration. Nonetheless, emergency arbitration is widely accepted in Switzerland. Article 43 of the Swiss Rules contains specific provisions regarding the procedure for emergency arbitrator relief, including the effects of such decision (Article 43(8), of the Swiss Rules). According to this provision, a decision of the emergency arbitrator shall have the same effects as an interim measure issued by a regular arbitral tribunal. Accordingly, interim relief is binding on the parties and can be enforced in a state court.

That being said, unless the parties agree otherwise, the Swiss state courts remain competent to order interim

measures, even if the applicable arbitration rules provide for emergency arbitration. In case a party anticipates that it will be necessary to enforce the interim relief sought, it may be more efficient to directly apply to the state courts and request the granting of interim relief, rather than first applying to the emergency arbitrator and then in a second step having the interim relief enforced by the state courts.

42. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

No mandatory provision under Swiss statutory law provides for expedited or simplified procedures, but institutional arbitration rules provide such procedures.

Notably, the Swiss Arbitration Centre (then known as the Swiss Chambers' Arbitration Institution) was the first institution to introduce provisions for expedited procedures, doing so in 2004.

Article 42 of the Swiss Rules provides for an expedited procedure applicable to cases in which (i) the parties so agree or (ii) where the amount in dispute does not exceed one million Swiss francs (unless the institution decides otherwise, taking into account all relevant circumstances). The award must be rendered within six months from the date when the arbitral tribunal receives the file from the institution.

The expedited procedure under the Swiss Rules has proven to be a success, reaching 48% of all cases decided by the Swiss Arbitration Centre thus far in 2024.

43. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

The Swiss Arbitration Centre has endorsed gender diversity and is making its best to increase the equal representation in arbitrators' appointments. Thus far in 2024, the women arbitrators have been appointed in 46% of the cases where the institution was called on to appoint an arbitrator.

44. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

With respect to enforcement proceedings in Switzerland governed by the New York Convention, Article V(1)(e) provides that a party can oppose the enforcement of an award in cases where (i) the award has not become binding yet, (ii) the award has been set aside or suspended by a competent authority in the country of its origin. The burden of proof of these two circumstances lies on the applicant in the enforcement proceedings.

The Swiss Federal Tribunal found in a decision of 2008 that the possibility of bringing such an action is not sufficient to render the award non-binding within the meaning of the New York Convention (DFT 135 III 136). Cases where the Federal Tribunal had to deal with objections against enforcement on the basis of a non-binding foreign arbitral award dates back to more than forty years ago. The Federal Tribunal denied the requests, on the grounds that the plaintiff did not submit the necessary proof (DFT 108 IB 85, 1982 and 110 IB 191, 1984).

45. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

Switzerland has a strong and effective legal set of rules to tackle corruption. The Swiss Criminal Code contains essential provisions on this issue. Articles 322*ter* to 322*novies* prohibit active and passive bribery of public officials, including arbitrators, as well as active and passive bribery of private individuals. These offenses are prosecuted *ex officio*, except for certain peculiar situations. In Switzerland, the standard of proof for proving corruption applied by local courts is “beyond reasonable doubt".

Corruption is viewed as corrosive to contractual integrity and as a distortion of fair competition—values that are central to Swiss law. Consequently, corruption constitutes an affront to fundamental Swiss principles, rendering it irreconcilable with Swiss public policy. For this reason, an award could be challenged (and enforcement of the award could be refused) on the basis that the award orders a party to pay bribes or otherwise approves corrupt practices.

With regard to the burden of proof, it is for the party bringing the challenge (or objecting to enforcement) to prove that corruption is involved but that the arbitral tribunal failed to consider it in the award. However, if corruption had already been alleged in the arbitral proceedings and the arbitral tribunal rejected the

argument for lack of substantiation or lack of proof, the party will be precluded from invoking corruption again.

46. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

The Swiss Rules were updated in 2021, and two changes may be directly linked to the effects of the COVID-19 pandemic: (i) an express provision regarding remote hearings and (ii) the possibility of filing a request for arbitration solely in electronic form.

47. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

The amendments to the Swiss Rules mentioned in the answer to Question 47 have encouraged greater use of technology. The Swiss Arbitration Centre supports paperless arbitration by not requiring hard copies of requests for arbitration or further documents, and by allowing notifications and communications with parties via email. Nonetheless, the Swiss Rules do not contain a default provision for electronic filings of the parties' submissions; rather, it is in the discretion of the arbitral tribunal to determine whether the parties' submissions should be provided in hard copies or electronically.

48. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

Regarding climate change, in 2020, an association for climate change filed an appeal before the Swiss Federal Tribunal accusing the Swiss Federal Council (the Swiss government) of not taking measures in field of climate change to meet the targets set out in the Paris Agreement. The applicant sought protection from an excessive global rise in temperature on the basis of Articles 2 (right to life) and 8 (right to respect for private life) of the European Convention on Human Rights (the **ECHR**). The Swiss Federal Tribunal dismissed the appeal on the ground that the association was not sufficiently affected by the alleged omissions (DFT 146 I 145, 2020).

The association filed a request before the European Court of Human Rights (the **ECtHR**). In April 2024, the Court issued its decision, ruling in favour of the association (Application no. 53600/20). In particular, the ECtHR affirmed that Switzerland had failed to protect its citizens from the global climate change in an adequate and consistent manner and ordered the state to reassess its global climate change strategy, which will be monitored by the Council of Europe.

Regarding human rights, in an earlier judgment (Application no. 10934/21), the ECtHR found Switzerland liable for violating Articles 8 and 14 (prohibition of discrimination) of the ECHR. The case concerned an African athlete, Caster Semenya, who had complained that she had been unable to take part in international competitions because she had refused to lower her testosterone levels in order to comply with certain rules of the World Athletics. The athlete first challenged the rules before the Court of Arbitration for Sport (CAS) and the Swiss Federal Tribunal, both of which rejected her claims. The ECtHR held that Switzerland had failed to provide "sufficient institutional and procedural safeguards" to allow her complaints to be examined effectively.

49. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

An arbitral tribunal is obliged to comply with the mandatory rules of the applicable *lex causae* (DFT 120 II 155), regardless of whether this is the law chosen by the parties or the law determined by the arbitral tribunal. Therefore, if the economic sanctions derive from the applicable *lex causae*, they shall be observed.

If the economic sanctions belong to a set of rules other than the *lex causae*, they shall be considered only in case they are directly applicable as foreign mandatory rules. There is some uncertainty in the Swiss legal doctrine as to the application of such rules. While some authors tend to consider that the foreign mandatory rules are applicable only if they are closely connected to the case, other authors advocate that the question should be resolved by determining whether the state that enacted the mandatory rules has an overriding and legitimate interest in applying such mandatory rules regardless of the law applicable to the contract.

In any case, it is more likely that economic sanctions resulting from mandatory rules will be considered applicable if they are recognized by a large community of

states as part of the international public policy, rather than just by a single state or a small group of states.

50. Has your country implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?

No. Switzerland has not introduced any particular and specialized measure on the deployment of artificial intelligence, generative artificial intelligence or large language models in the field of international arbitration.

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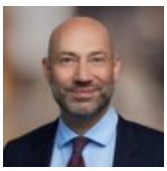

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