

Arbitration in Switzerland – the Fine Art of Dispute Resolution

Switzerland has a long-standing tradition in arbitration that dates back to the late nineteenth century. Today, it is one of the leading hubs of international commercial and investment arbitration in the Western hemisphere, which is also of particular interest to companies from the Asia-Pacific region that do business with European and American companies.

Legal Framework of International Arbitration in Switzerland (Chapter 12 of the Swiss Private International Law Act)

In Switzerland, international arbitration is governed by Chapter 12 of the Swiss Private International Law Act ('Swiss PILA'), an independent, lean and clear legal code for international arbitration containing only 19 articles. It is applicable to all arbitrations carried out in Switzerland involving at least one party that was neither domiciled nor had resided in Switzerland when the arbitration agreement was concluded.

Since its adoption in 1988, Chapter 12 of the Swiss PILA has proven to be a legal basis that is greatly appreciated for its efficiency and arbitration-friendliness by companies using international dispute resolution services in Switzerland (institutional arbitration, such as under the Swiss Rules of International Arbitration or the ICC Arbitration Rules, or ad hoc arbitrations). Besides the lean and pragmatic regulation of the arbitration procedure, these positive reactions are due to the list of very limited grounds for setting aside an award in Article 190 of the Swiss PILA, and the fact that such actions are to be brought directly before the highest court of Switzerland, the Federal Supreme Court, i.e., there is only one level of appeal. In fact, if all the parties to a dispute are domiciled outside of Switzerland, they may even completely waive their right to set aside proceedings.

The arbitration-friendly approach of the Swiss PILA is also followed by the Federal Supreme Court as the court of appeal by favouring a pronounced policy of non-

interference. For instance, only about five percent of all appeals filed pursuant to Article 190 of the Swiss PILA have been successful. As a rule, the Federal Supreme Court will render its decision within six to eight months of being seized; this helps to avoid cost-intensive and time-consuming post-arbitration litigation, which parties are often confronted with in other jurisdictions. In this way, Chapter 12 of the Swiss PILA ensures that the parties are provided with a final and binding award within a reasonable period of time and at a reasonable cost.

This is also supported by the straightforward and pragmatic approach of Swiss arbitration practitioners and their rather sceptical attitude towards the Anglo-American style of dispute resolution, which is often influenced by extensive discovery practice and other typical features of United States' litigation, leading to complex and expensive proceedings. Time and cost efficiency, along with flexibility and confidentiality, have been and shall remain, the pivotal idea and crucial advantages of arbitration proceedings as a means for international dispute resolution. This is also in line with the legitimate expectations of potential users of dispute resolution services from various jurisdictions in the Asia-Pacific region.

The selection of Switzerland as the seat of arbitration may be combined with the choice of Swiss law as the applicable law to the contractual relationship. The Swiss Code of Obligations of 1911 is known and widely accepted as a statute leading to fair and reasonable solutions in international commercial disputes.

A growing number of parties to disputes under the Swiss Rules come from the Asia region.

The Swiss Rules of International Arbitration 2012 of the Swiss Chambers' Arbitration Institution ('SCAI')

On 1 January 2004, the unified Swiss Rules of International Arbitration entered into force as successor rules of the various arbitration rules of the Cantonal Chambers of Commerce and Industry, some of which have existed for almost one hundred years. Although the UNCITRAL Arbitration Rules 1976 were taken into consideration by the drafters, the Swiss Rules were an autonomous and considerably less complex set of rules, which has been well received by the international arbitration community in the last ten years. This is why most of the provisions in the revised Swiss Rules of International Arbitration, which entered into force on 1 June 2012 ('Swiss Rules'), were maintained without material amendments, and other provisions were only slightly modified to account for the most recent developments in international arbitration and to make the proceedings even more efficient and cost effective.

Arbitrations under the Swiss Rules are administered by the Swiss Chambers' Arbitration Institution ('SCAI'), a separate legal entity from the Chambers of Commerce and Industry. It is supported by the Arbitration Court, a body composed of experienced arbitration practitioners. The Arbitration Court renders the decisions provided for under the Swiss Rules, such as decisions on the challenge of arbitrators. Internal rules govern the internal organisation and make sure that the Arbitration Court fulfils its tasks in a highly professional and efficient manner.

The SCAI administers cases not only in English, but also in German, French and Italian, which are the official languages in Switzerland. The knowledge and application of various languages goes hand-in-hand with an understanding of the cultural differences of the parties involved in international disputes and is one of the strengths of the SCAI. Therefore, it is not surprising that a growing number of parties to disputes under the Swiss Rules

(and of other institutional arbitrations such as ICC that make Switzerland their place of arbitration) come from the Asia region.

Under the Swiss Rules, the SCIA and its Arbitration Court have a light administrative function that respects party autonomy and the discretion of the arbitral tribunal to structure proceedings in the most appropriate way for the individual case. The parties may appoint the arbitrator of their choice and, together with the arbitral tribunal, work out the details of the proceedings. After its constitution, the arbitral tribunal is responsible for conducting the proceedings within the legal framework of Chapter 12 of the Swiss PILA, the Swiss Rules and the individual terms agreed upon by the parties. The Arbitration Court's control function is basically limited to assuring the quality of the proceedings by confirming the arbitrators, monitoring the duration of the proceedings and approving the adequacy of the cost decision. However, it does not scrutinise the award on the merits rendered by arbitral tribunals.



Switzerland has become one of the world's leading venues for international arbitration.

Another crucial aspect that furthers efficient dispute resolution is the possibility of arbitral tribunals to offer settlement facilitation (Article 15.8 of the Swiss Rules). Being aware of the fact that amicable settlement is not only the most efficient, but often also the most satisfying way to solve a dispute, it is widely accepted in Switzerland (and other civil law jurisdictions more than in common law jurisdictions) that the arbitral tribunal may play a role in settlement discussions if the parties agree to the tribunal's involvement (thereby waiving their right to challenge the arbitrator as a consequence of its participation in settlement negotiations).

Overall, the Swiss Rules are very modern, state-of-the-art rules for efficient and cost-effective dispute settlement subject to lean, yet quality assured administration.

To ensure efficiency in arbitral proceedings, the Swiss Rules provide for short time limits and require all participants, i.e., the parties to the dispute and the arbitral tribunal, to make every effort to contribute to the efficient conduct of the proceedings and to avoid unnecessary costs and delays (Article 15.7 of the Swiss Rules).

The Swiss Rules also contain a specific article on the so-called expedited procedure (Article 42 of the Swiss Rules). The main characteristics of these proceedings are that the case will be heard by a sole arbitrator, there will be only one exchange of briefs, and only one hearing will take place, if at all; the arbitral tribunal is expected to render the award within six months from the date on which the files are transmitted to the arbitrator. The parties to a dispute may freely agree to have the expedited procedures applied. In addition, they apply by virtue of the Swiss Rules in cases where the amount in dispute is less than one million Swiss francs (which is currently equal to approximately US\$1.125 million). The most recent statistics show that about 40 percent of all cases administered by the SCAI are subject to the expedited procedure.

In Article 43 of the Swiss Rules, an emergency relief scheme was introduced in order to allow the parties to the dispute an alternative to state court proceedings in case provisional measures are required prior to the constitution of the arbitral tribunal. Should the parties prefer not to have this option for emergency relief by a sole arbitrator, they can agree to opt out of this provision.

Switzerland is One of the World's Leading Venues for International Arbitration

Apart from the arbitration-friendly legal framework, a number of other factors have led Switzerland to become one of the world's leading venues for international arbitration.

Located in the centre of Europe, with its democratic and consensus-oriented culture, political, economic and judicial stability, as well as knowledge of various languages, Switzerland is an ideal venue for the resolution of disputes between parties of different legal and cultural backgrounds. And thanks to modern infrastructure with punctual and well-functioning public transport systems and numerous well-equipped hotels and meeting facilities, Zurich and Geneva, the two cities hosting most of the arbitration hearings in Switzerland, can easily and comfortably be reached from across the globe.

Besides the SCAI, Switzerland is also home to other internationally renowned arbitral institutions, such as the Court of Arbitration for Sports in Lausanne ('CAS'), which hears and resolves by arbitration and mediation more than 300 cases per year involving sports-related disputes from all over the world. The WIPO is the leading institution in resolving domain name disputes and hears more than 2,500 cases per year. The Dispute Settlement Body of the WTO, located in Geneva, deals with international trade disputes between member states or between at least one member state and individuals of another member state.

Last but not least, a large number of cases under the ICC Arbitration Rules have their place of arbitration in Switzerland and the Swiss National Committee of the ICC is very often consulted in the process of searching and nominating arbitrators, whenever the ICC Court of Arbitration must appoint an arbitrator (e.g. when a party fails to nominate its arbitrator or the parties are unable to agree on a sole or presiding arbitrator). Some of the reasons for this are the large community of experienced arbitration practitioners who come from a long tradition and have handled innumerable arbitration cases. Many of these practitioners are versed in handling complex multi-jurisdictional cases, both as counsel and arbitrators. Their experience not only includes the professional handling of cases, but also efficient organisation of meetings and evidentiary hearings.

Due to these cultural, legal and geographical considerations and its established arbitration expertise, Switzerland is frequently chosen by parties from all over the World as the seat of arbitration and venue for hearings (often in combination with the choice of Swiss law as the applicable substantive law). In fact, while Switzerland has always ranked among the most popular places of arbitration, the latest ICC surveys show that it was the most frequently selected place of arbitration for ICC arbitrations in 2012. Moreover, Swiss arbitration practitioners constitute the lion's share of arbitrators appointed in ICC proceedings.

All the previously stated factors are also of interest to parties from Asia-Pacific countries, which can choose arbitration in Switzerland in cases where they are not in a position to agree with the jurisdiction of an arbitral tribunal that is subject to a regional arbitration institution, such as the SIAC, HIAC, CIETAC, BJAC or KLRCA.

Institutes and Organisations in Switzerland Offering Post-Graduate Training in Dispute Resolution

Most of the arbitration practitioners in Switzerland are associated with the ASA, the Swiss Arbitration Association, which has more than 1,000 members (including more than 350 from outside of Switzerland). The ASA strongly contributes to the development of international arbitration both in Switzerland and abroad by organising conferences, workshops and local group meetings and by issuing the 'ASA Bulletin' on a quarterly basis.

Switzerland also offers a variety of educational programmes in the field of international arbitration. The Swiss Arbitration Academy, in association with the Universities of Lucerne and Neuchâtel, offers a unique post-graduate programme (Certificate of Advanced Studies) in arbitration, which combines the benefits of academic education with practice-oriented training taught by renowned international practitioners. Furthermore, the Geneva University Law School offers the Geneva Master (LL.M.) in International Dispute Settlement (MIDS), while the Faculty of Law of the University of Zurich runs a specialisation course in international contract law and arbitration law as part of the LL.M. in International Business Law. This institution also plans to launch an LL.M. in International Litigation and Arbitration programme in September 2014.

Important Addresses of Arbitration Organisations, Institutions, and Providers of Post-Graduate Training in Switzerland

Swiss Arbitration Association (ASA)

<http://www.arbitration-ch.org/pages/en/asa/index.html#.UwnN6meYafA>

Swiss Chambers' Arbitration Institution (SCAI)

<https://www.swissarbitration.org/sa/en/>

Swiss Commission of Arbitration (National Committee) of ICC Switzerland

<http://www.icc-switzerland.ch/en/arbitration/swiss-commission-of-arbitration>

SwissArbitrationHub

<http://www.swissarbitrationhub.com/sah/index.php/page/1/home>

Swiss Arbitration Academy (SAA) (in cooperation with the Universities of Lucerne and Neuchâtel)

<http://www.cas-arbitration.ch/>

MIDS – Geneva LL.M. in International Dispute Settlement

<http://www.mids.ch/>

University of Zurich LL.M International Litigation and Arbitration

<http://www.weiterbildung.uzh.ch/programme/detail.php?angebnr=421>



Dr. Urs Weber-Stecher

Dr. iur., LL.M, Attorney-at-law

Partner, Wenger & Vieli AG

Urs Weber-Stecher is an arbitration practitioner heading the arbitration team of Wenger & Vieli Ltd. in Zurich, Switzerland. He regularly acts as arbitrator and counsel of parties in international arbitrations and teaches arbitration law at the University of Zurich and the Swiss Arbitration Academy.