Dispute Resolution 2021

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LEXOLOGY®
Getting The Deal Through

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Published by
Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

First published 2003
Nineteenth edition
ISBN 978-1-83862-647-1

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

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Latham & Watkins LLP

Lexology Getting The Deal Through is delighted to publish the nineteenth edition of *Dispute Resolution*, which is available in print and online at www.lexology.com/gtdt.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Martin Davies and Alanna Andrew of Latham & Watkins LLP, for their continued assistance with this volume.

LEXOLOGY
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London
May 2021

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This article was first published in June 2021
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Switzerland

Philipp Lindenmayer and Flavio Peter
Wenger & Vieli Ltd

LITIGATION

Court system

1 | What is the structure of the civil court system?

Switzerland has a federal structure. Accordingly, its jurisdiction and court system lies in the competence and responsibility of the different states, which are called cantons. However, the law of civil procedure (unlike the laws of court organisation) is federal law and, therefore, unified in Switzerland, and the cantons are obliged by federal law to provide two instances of civil jurisdiction, that is, district courts and courts of appeals, where certain areas of law (such as labour law and rental law) are assigned to specific, specialised departments within the district courts.

There are certain exceptions to the requirement of two instances, which pertain, in particular, to intellectual property and antitrust matters that must be referred to a single (higher) cantonal instance or (for patent matters) to a specialised federal court. Furthermore, four Cantons (Zurich, Berne, St Gallen and Aargau) maintain commercial courts that are as single cantonal instance competent for commercial disputes with a certain amount in controversy between legal entities registered in a Swiss commercial register or a comparable foreign register.

The ordinary procedure is generally preceded by a conciliation procedure before a justice of the peace (there are numerous exceptions, for example, if a single cantonal court has jurisdiction or if the summary procedure is used). If no agreement can be reached at such a hearing, the case must be brought before the ordinary court.

In ordinary proceedings, the district court generally judges in tribunals. In simplified proceedings (ie, for amounts in dispute of up to 30,000 Swiss francs) or in summary proceedings (which also include proceedings concerning provisional measures or injunctions), a single judge has jurisdiction. The higher courts (which also include single cantonal instances) are adjudicated by between three and five judges.

Judgments of the district courts may, if the preconditions are met, be referred to the courts of appeal, and those judgments (as well as those of single cantonal instances), if the preconditions are met, to the Swiss Federal Supreme Court.

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

The judges conduct the proceedings, including the taking of evidence, and apply the law ex officio, while the facts (with exceptions) must be substantiated by the parties (the requirements in this regard are comparatively high in Switzerland). The Swiss system does not hold pre-trial discovery proceedings conducted by the parties and does not provide for jury trials.

In principle, judges are elected directly by the people or by representatives of the people within the framework of a political process, which does not alter their obligation to remain strictly impartial and independent. This system ensures that the political spectrum is also reflected in the judiciary.

Limitation issues

3 | What are the time limits for bringing civil claims?

Under Swiss law, limitation periods are a matter of substantive law and are mainly set forth in the Swiss Code of Obligations. Contractual claims generally become time-barred after 10 years, or five years if it is a periodic performance such as salaries or rent. There are many exceptions to these general rules, depending on the nature of the claim. Tort claims and claims out of unjust enrichment become time-barred after three years. The prescription period starts to run in general when the claim becomes due.

The parties may contractually waive the assertion of the statute of limitations (mostly up to a certain point in time and to the extent that the statute of limitations has not yet occurred at the time of the declaration).

The limitation period may be interrupted by an acknowledgement of the debt, the initiation of debt enforcement proceedings or by bringing a lawsuit before the justice of the peace or (if no conciliation procedure is to be conducted) before the competent court. In the case of such interruption, the applicable limitation period starts again.

The court does not consider the limitation of a claim ex officio. Therefore, the parties must invoke the statute of limitations if they want to argue against a claim in this respect.

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

In principle, there is no specific pre-action behaviour required by Swiss law. In particular, there is no obligation to threaten or announce the filing of a lawsuit.

In practice, of course, before initiating legal action, attempts are usually made to find an amicable solution between the parties. Pre-trial discovery proceedings are unknown to the Swiss system.

Starting proceedings

5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload?

In principle, the procedure is initiated by a written claim and a request for a conciliation hearing with the justice of the peace. If no amicable settlement is reached at such hearing, the claiming party must file the lawsuit with the competent court within three months. If this deadline is not met (and if no specific time limit for filing an action is applicable), the conciliation procedure can be repeated and thus the action can still be brought.

The petition to the justice of the peace can be limited to the prayers for relief and a brief explanation of the nature of the dispute.

The statement of claim is filed with the competent court (either directly or after a conciliation hearing) and must contain the prayers for relief and the reasoning of the claim (in the simplified procedure, the reasoning can also be provided at the oral hearing). The statement of claim is then served to the opposing party with a deadline to file the answer to the statement of claim. If the court summons the parties directly to an oral hearing immediately after the filing of the statement of claim, the answer to it must be given orally. However, the court usually orders the defending party to file a written statement of defence. After an initial exchange of submissions (or oral claim and response, if applicable), the parties have the opportunity for a full second presentation of their case (reply and rejoinder). In more complex proceedings, and especially in commercial disputes, the proceedings (except for questioning parties and witnesses in proceedings of taking the evidence) are generally in writing.

The service of all trial-related documents (party submissions, court orders, etc) is conducted by the court.

The judges conduct the proceedings, including the taking of evidence, and apply the law ex officio, while the facts (with exceptions) must be substantiated by the parties (the requirements in this regard are comparatively high in Switzerland). The courts, in particular the specialised courts and the commercial courts, are therefore in principle able to deal efficiently with very large and complex cases in any field of law.

Timetable

6 | What is the typical procedure and timetable for a civil claim?

The typical procedure is an exchange of two written submissions or oral presentations, with the possibility to make further comments on new assertions of the other party, followed by either directly a judgment or the proceeding of taking the evidence followed by a judgment after the parties have had the opportunity to comment on the outcome of the evidence proceeding.

It is also possible (and quite common at the commercial courts) that the court conducts (with or without presenting its preliminary opinion to the parties) a settlement hearing after a first round of submissions before the proceeding continues.

Regarding the timetable, one must count (in regular proceedings) roughly one year per instance if no proceeding of taking the evidence (at the court of first instance) is conducted.

Case management

7 | Can the parties control the procedure and the timetable?

The management of the process lies with the court. Accordingly, the parties have relatively little influence on the proceeding and the time frame.

The individual submissions must be made within certain deadlines set by the court. These time limits can in principle be extended, which the parties always make use of. The parties can also request the court to conduct a settlement hearing to accelerate the process. In principle, the court will not ignore such requests. The parties can of course terminate the proceedings at any time (especially in commercial matters) by withdrawing the claim, acknowledging the claim or reaching a settlement.

Evidence – documents

8 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

There is no such duty in the context of legal proceedings. Such duty may, however, exist based on the substantive law (eg, preservations duties related to bookkeeping documents), which may have consequences in a court proceeding (depending on the nature of the dispute).

The parties may make document production requests. Those requests must, however, be very specific, that is, they must identify the requested document and be reasoned as to relevance and materiality to the case (no fishing expedition, no pre-trial discovery). If a party does not comply with such requests (granted by the court), that behaviour may be taken into account by the court when assessing the evidence.

If it is requested that an interim measure be ordered ex parte and thus without hearing the opposing party, the requesting party is in principle obliged to submit the written position of the opposing party (if any), even if it does not correspond to its own position (which is usual) and may contain the arguments of the opposing party.

Evidence – privilege

9 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

The correspondence and work products of a lawyer are privileged if the lawyer is acting in this capacity as legal counsel (and not, for example, as a financial adviser or board member). Accordingly, attorney–client privilege is limited to the typical professional activities of an attorney. In-house counsel cannot invoke attorney–client privilege.

Evidence – pretrial

10 | Do parties exchange written evidence from witnesses and experts prior to trial?

As the Swiss system does not know pre-trial discovery, such exchange is usually not made. The parties rather have to submit the evidence together with their submissions. Furthermore, witnesses are questioned by the court, and written witness statements are not admissible evidence. Expert reports submitted by a party have no more value than a party assertion. A party may, however, request the court to obtain an expert report on a specific topic, which report will then be an admissible piece of evidence.

Evidence – trial

11 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

Documentary evidence must be filed by the parties together with the respective assertions that they want to have supported by that evidence. The same applies to witnesses who need to be invoked by the parties. If the court deems it necessary, it will summon and question the witnesses at a hearing during the proceeding of taking the evidence. The parties are entitled to ask additional questions.

If so invoked by the parties, experts are appointed by the court. The parties need to be heard at every step of this appointment. Experts can be heard during a hearing or provide a written report, which again can be commented on by the parties.

Both witnesses and experts are obliged to tell the truth under threat of prosecution.

Interim remedies

12 | What interim remedies are available?

A party may apply for interim measures before or during a pending proceeding. For the measure to be ordered, the requesting party must demonstrate that its chances of success in the matter are intact and that, without such a measure, it faces a disadvantage that cannot easily be remedied.

The measure is usually issued in the form of an order to omit a certain action. It is principally not possible to provisionally award the actual plea because of the prejudicial nature of such a measure.

A party may request that the measure be ordered ex parte, that is, before hearing the opposing party. Such request, however, requires a high degree of urgency to be established by the requesting party.

If a party assumes to be addressed by an ex parte interim measure, it can deposit a so-called protective brief (*Schutzschrift*) with the court that the party deems to be competent for such interim measure in order to protect its right to be heard. The court will then take this submission into account when deciding about the party's request for ex parte measures.

Monetary claims must be secured by freezing orders pursuant to the Swiss debt enforcement law, which lists reasons that allow those measures (such as an enforceable judgement).

Remedies

13 | What substantive remedies are available?

The action may consist of a claim for specific performance (including for a specific act or omission), for declaratory relief or of an action requesting a change of a legal right or status (eg, an action for divorce). For claims for damages, the claim is limited to the actual damage suffered. Accordingly, the assertion of punitive damages (in the sense of common law systems) is principally unknown to the Swiss system, as is the 'deep pocket' principle in general. Accordingly, if a foreign judgment grants punitive damages the recognition and enforcement of such a judgment may be refused in Switzerland. It should however be mentioned that the last decade has seen a slight shift towards a more lenient approach in practice and scholarly writing regarding the recognition and enforceability of decisions granting punitive damages. Particularly in international arbitration in Switzerland it seems to be the majority view of practitioners that an award granting punitive damages does not conflict with public policy under art. 190(2)(e) of the Swiss Private International Law Act.

The claiming party can sue for default interest on monetary claims at a rate (unless otherwise provided for in the contract) of 5 per cent per year from the due date until performance.

Enforcement

14 | What means of enforcement are available?

Judgments adjudicating a certain amount of money are enforced by the Swiss debt enforcement law. If the debtor raises an objection against the respective payment order, that objection may be set aside in a summary proceeding in which the debtor has only very limited defensive arguments available against the judgment. When the objection is set aside, the debtor can avoid enforcement in his or her assets only by payment of that amount adjudicated. Other judgments are enforced by the courts in summary proceedings, and the enforcement court may request assistance from other authorities.

Public access

15 | Are court hearings held in public? Are court documents available to the public?

Civil proceedings, in particular hearings and judgments, are held in public. However, the public may be excluded when required by public interest or by the legitimate interests of an involved person, or may not be applicable at all (eg, in family law matters). Court documents are not public.

Costs

16 | Does the court have power to order costs?

The court costs as well as the indemnity that the losing party has to pay to the prevailing party are calculated according to special cantonal tariffs and depend in particular on the amount in dispute. The court distributes these costs between the parties as part of the judgment, taking into account the degree of win or loss of the parties.

After filing the claim, the claiming party is generally requested by the court to submit an advance payment of the amount of the presumed court costs (calculated according to the amount in dispute and the tariff). Under certain circumstances, the plaintiff may also be required to provide security for the indemnity of the opposing party. If advance payments are not made, the court will not enter the action.

Funding arrangements

17 | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Lawyers are prohibited from entering into agreements according to which the fees of the lawyer exclusively consist of a share of the proceeds of the claim or according to which the lawyer entirely waives the fees if the case is lost.

According to the Swiss Federal Supreme Court, success fees are permissible if: the non-success-related fee component is not only high enough to cover the lawyer's prime costs but also enables a reasonable profit; the success-related fee component is not so high in relation to the fee owed in each case that the independence of the lawyer is impaired and there is a risk of unconscionability; and the agreement is concluded at the beginning of the mandate relationship or after termination of the legal dispute, and not during the current mandate.

Insurance

18 | Is insurance available to cover all or part of a party's legal costs?

Legal expenses insurance is widespread in Switzerland and is particularly common in disputes relating to employment and rental law. Exactly which cases are covered by the insurance and to what extent depends on the respective policy.

Class action

19 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Even though two or more persons may be (if all respective prerequisites are met) on the side of claimant or defendant in Swiss proceedings, class actions in the classic sense are not known in Switzerland.

Appeal

20 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Judgments of cantonal district courts (first instance) with an amount in dispute of at least 10,000 Swiss francs can be appealed to the cantonal court of appeal. The deadline for such appeal is 30 days, and the appellant may assert both an incorrect establishment of the facts and an incorrect application of law by the lower instance. Against judgments below 10,000 Swiss francs and procedural decisions, an objection can be raised for the reason of incorrect application of the law or obviously incorrect establishment of the facts.

Decisions of the courts of appeal may be appealed to the Swiss Federal Supreme Court. The deadline for such an appeal is 30 days, and the amount in dispute must in general be at least 30,000 Swiss francs. This highest instance is in general bound by the establishment of the facts by the lower instance, which is why, in general, only incorrect application of the law may be asserted.

Foreign judgments

21 | What procedures exist for recognition and enforcement of foreign judgments?

Unless an international treaty is applicable, foreign judgments are recognised according to the provisions of the Swiss Private International Law Act (SPILA). According to this act, foreign judgments are recognised if the foreign authorities of the state where the decision was rendered had jurisdiction (according to the provisions of the SPILA), if the decision is no longer subject to any ordinary appear or if it is a final decision, and if the judgment is enforceable.

A foreign judgment will be enforced only if the parties received proper notice of the proceedings, if the parties' fundamental due process rights were safeguarded, and if the foreign judgment does not contradict the formal or material public policy, including the fundamental principle of *res judicata*.

Regarding international treaties, Switzerland is a member state of the Lugano Convention, which is equal to the Brussels I Regulation. According to this convention, judgments rendered in a member state of the European Union or in another contracting state to the convention are recognised pursuant to the provisions of the convention.

A party seeking recognition and enforcement of a foreign decision in Switzerland may initiate specific exequatur procedures for that purpose under the respective provisions of the SPILA or the international treaty or, as an alternative, it may have the foreign decision recognised and enforced in the context of ordinary (debt) enforcement procedure.

Foreign proceedings

22 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Switzerland is a signatory state to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. According to this convention, the judicial authorities of another contracting state may request the competent Swiss authority to take evidence in Switzerland for a foreign proceeding. However, Switzerland made a reservation that it will not execute requests for the purpose of obtaining pre-trial discovery of documents if:

- the request has no direct and necessary link with the proceedings in question;
- a person must indicate what documents relating to the case are or were in his or her possession or keeping or at his or her disposal;
- a person must produce documents other than those mentioned in the request for legal assistance, which are probably in his or her possession or keeping or at his or her disposal; or
- interests worthy of protection of the concerned persons are endangered.

ARBITRATION

UNCITRAL Model Law

23 | Is the arbitration law based on the UNCITRAL Model Law?

International arbitration in Switzerland is governed by the 12th chapter of the Swiss Private International Law Act (SPILA), whereas domestic arbitration is governed by the 3rd book of the Swiss Code of Civil Procedure (SCCP).

While the SPILA is not based on the UNCITRAL Model Law, these two statutes were drafted around the same time and do not differ substantially.

Arbitration agreements

24 | What are the formal requirements for an enforceable arbitration agreement?

Until 2020, the former text of article 178 SPILA required that the relevant declarations of intent of all parties be recorded in writing.

To align article 178 SPILA with practice, the revised text (effective as of 1 January 2021) requires that the arbitration agreement be made in writing or in any other means of communication that permits it to be evidenced by a text. Hence, in practice, neither a signature nor an exchange of documents is required for a formally valid arbitration agreement, which is in line with the standard set forth by article 7(4) UNCITRAL Model Law Option I (as amended in 2006) and, therewith, more liberal than the formal requirements of article II of the New York Convention.

Choice of arbitrator

25 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

If the parties do not explicitly, or by reference to a set of arbitration rules, determine the number of arbitrators and the exact appointment mechanism, the local state court may be seized with the question.

In both international and domestic arbitration, the arbitral tribunal will by default consist of three members.

Unless the parties have agreed on a specific appointment mechanism, each party shall appoint one arbitrator, and the two party-appointed arbitrators elect the presiding arbitrator. Where the parties fail to choose a single arbitrator or to appoint a plurality of arbitrators, or if the arbitrators fail to agree on a chairperson, each party may seize the local courts at the seat of the arbitration to appoint the arbitrators or the chairperson, or both.

A party may challenge an arbitrator if the arbitrator does not meet the qualifications agreed upon by the parties, if a ground for challenge exists under the rules of arbitration as agreed by the parties, or if circumstances give rise to justifiable doubts as to his or her independence or impartiality.

A party may only challenge an arbitrator based on the grounds that came to that party's attention after such appointment. That challenge must be notified to the arbitral tribunal and the other party without delay.

If the challenged arbitrator disputes the challenge, the matter may be referred to the competent body designated by the parties or, absent any designation, to the local courts at the seat of the arbitration to decide on the challenge.

Arbitrator options

26 | What are the options when choosing an arbitrator or arbitrators?

The parties may freely choose their arbitrator from a large community of experienced and highly qualified practitioners.

Switzerland is and remains one of the most popular hubs for international commercial arbitration, and Swiss-qualified lawyers are among those arbitration practitioners most often appointed at an international level.

Not only owing to recent initiatives, such as the Equal Representation in Arbitration Pledge and the Racial Equality for Arbitration Lawyers initiative, but also owing to intelligence on arbitrators being more readily available, the pool of potential arbitrators is growing and the diversity in appointments is ever increasing.

Arbitral procedure

27 | Does the domestic law contain substantive requirements for the procedure to be followed?

The parties are free to agree on the procedure to be followed by the arbitral tribunal, be it by specific agreement or by reference to a set of arbitration rules or any other procedural law.

The parties' autonomy is limited only by the mandatory principles of the right to be heard and the principle of equal treatment.

Court intervention

28 | On what grounds can the court intervene during an arbitration?

There are only very limited possibilities for court intervention in arbitrations seated in Switzerland. The state courts at the place of arbitration may get involved with regard to the appointment, removal or replacement of an arbitrator. Their assistance may further be sought with regard to the enforcement of interim measures and the taking of evidence.

Moreover, for very limited grounds, the parties may challenge an arbitral award before the Swiss Federal Supreme Court. In international arbitration, if all parties have their domicile or seat outside of Switzerland, they may exclude their right to challenge an arbitral award by an agreement respecting the same form as article 178 SPILA.

Interim relief

29 | Do arbitrators have powers to grant interim relief?

Yes, the arbitral tribunal is competent to order interim measures, including preliminary measures to protect evidence as well as security for costs.

Absent an explicit agreement by the parties, however, the arbitrators' competence is not exclusive. In principle, state courts and arbitral tribunals have concurrent jurisdiction to order interim measures.

As an arbitral tribunal does not have coercive powers, the arbitral tribunal may apply to the local state court to enforce any measures ordered by the tribunal with which the party concerned does not voluntarily comply.

Award

30 | When and in what form must the award be delivered?

In international arbitration in Switzerland, the parties have the autonomy to decide on the procedure and the form of an arbitral award. Absent any agreement, the lex arbitri requires that the award will be in writing, set forth the reasons on which it is based, and be dated and signed.

Unlike many sets of arbitration rules, the lex arbitri does not stipulate a time period within which the tribunal must render the arbitral award.

Appeal

31 | On what grounds can an award be appealed to the court?

In international arbitration, an arbitral award may be challenged only on very limited grounds, namely:

- if a sole arbitrator was designated irregularly or the arbitral tribunal was constituted irregularly;
- if the arbitral tribunal erroneously held that it had or did not have jurisdiction;
- if the arbitral tribunal ruled on matters beyond the claims submitted to it or if it failed to rule on one of the claims;
- if the fundamental principle of equal treatment of the parties or their right to be heard was violated; and
- if the award is incompatible with public policy.

The parties may challenge the arbitral award in front of the Swiss Federal Supreme Court, as the only and final instance.

While in international arbitration the parties (if they are all domiciled or seated abroad) may exclude the right to challenge the arbitral award, the parties to a domestic arbitration (which by the definition under article 176 SPILA have their domicile or seat in Switzerland) cannot waive their right to challenge the award. However, the parties to a domestic arbitration may agree to have the challenge decided by the cantonal court having jurisdiction at the seat of arbitration.

Enforcement

32 | What procedures exist for enforcement of foreign and domestic awards?

Switzerland is a member state of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NYC) since 1965. Hence, arbitral awards rendered by tribunals seated abroad may be enforced pursuant to the provisions of the NYC. Moreover, Switzerland has concluded many bilateral treaties with individual countries, such as Austria, Germany, Italy, Spain and Sweden, concerning the mutual recognition and enforcement of state court decisions and arbitral awards.

Domestic arbitral awards may directly be enforced in Switzerland pursuant to the provisions of the SCCP or, concerning the enforcement of monetary claims, as per the provisions of the Debt Enforcement and Bankruptcy Act.

Costs

33 | Can a successful party recover its costs?

Neither the SPILA nor the SCCP contains provisions on the costs of arbitration and their respective allocation. It is in the parties' autonomy to decide on rules of cost allocation and, in practice, they usually do so by reference to a set of arbitration rules. Absent any agreement by the parties, the tribunal may decide on the allocation of costs between the parties. While the tribunal enjoys wide discretion on how it intends to apportion the costs between the parties, the arbitral tribunal would

usually apply the 'costs follow the event' rule, in the sense that the unsuccessful party must bear the costs of the arbitration and compensate the successful party for the respective costs incurred in proportion to its relative success.

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

34 What types of ADR process are commonly used? Is a particular ADR process popular?

Parties in Switzerland are generally used to conciliation proceedings, as conciliation is generally a prerequisite for subsequently filing an action with the ordinary courts.

Further, more recently, mediation has gained more attention, particularly in combination with arbitration. For instance, the parties may freely agree to open a mediation window before or during an ongoing arbitration to settle the dispute.

Requirements for ADR

35 Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

If the parties exclude the jurisdiction of the state courts and opt for a different dispute resolution process, they may freely choose between, for example, mediation and arbitration. The parties can also agree to combine certain ADR methods or to have different procedural steps. If the parties agree on such a multi-tiered dispute resolution mechanism, according to case law of the Swiss Federal Supreme Court, they must comply with the agreed process and cannot just skip a step. For instance, where a multi-tier clause provides, as a first step, for a negotiation period of 30 days and, as a second step, for arbitration, the parties must adhere to that process, failing which the arbitration may be stayed until the first procedural step has been complied with.

MISCELLANEOUS

Interesting features

36 Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

The 12th chapter of the Swiss Private International Law Act, which governs international arbitration as the lex arbitri, was recently revised. The revision came into effect on 1 January 2021 and is particularly aimed at reinforcing Switzerland's attractiveness for international arbitration by updating the lex arbitri. For instance, the revised provisions bring legal certainty on certain aspects by incorporating principles developed by the Swiss Federal Supreme Court and, more generally, by aligning the text with actual arbitration practice. Moreover, it makes international arbitration in Switzerland more accessible, for example by allowing written submissions in English before the Swiss Federal Supreme Court in challenge proceedings.

An additional feature of interest may be that, just like other cities in Europe (eg, Paris and Frankfurt am Main), Zurich is also considering the creation of a special chamber for international commercial disputes at the Commercial Court of the Canton of Zurich. If and when this Zurich International Commercial Court may be created is yet to be seen.

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UPDATE AND TRENDS

Recent developments

37 Are there any proposals for dispute resolution reform? When will any reforms take effect?

Apart from the most recent developments above, there are no immediate dispute resolution reforms planned at present.

Coronavirus

38 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The Swiss government has issued several decrees that implemented restrictions and different measures to tackle the effects of the covid-19 pandemic. Among other things, the Swiss government has rather quickly implemented a relief programme for companies hit by the effects of the pandemic so that they can swiftly receive financial support.

With regard to litigation and dispute resolution in Switzerland more generally, however, there were no particular initiatives or programmes installed. After a short period of suspending certain proceedings in spring 2020, the state courts have resumed the ordinary course of business.

The arbitration community in Switzerland and around the globe has been very quick in responding to the challenges brought about by the pandemic. Virtual hearings have become the norm and, after initial scepticism, have proven successful. Thus, for many cases, the virtual conduct of a hearing will provide a good alternative to in-person hearings.

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