



■ INDEPTH FEATURE Reprint November 2020

LITIGATION & ALTERNATIVE DISPUTE RESOLUTION

Financier Worldwide canvasses the opinions of leading professionals around the world on the latest trends in litigation & alternative dispute resolution.





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Urs Weber-Stecher is the co-head of Wenger & Vieli's dispute resolution team. He joined Wenger & Vieli in 1998 and has more than 20 years' experience in international arbitration as arbitrator and counsel. In recent years, he extended his practice to commercial mediation. His practice includes a broad variety of areas of law in a wide range of industries. He has been a lecturer for international arbitration at the University of Zurich since 2001. He currently is the president of the Swiss Arbitration Academy and the Commission of Arbitration of ICC Switzerland.



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Flavio Peter is counsel in Wenger & Vieli's dispute resolution team. He specialises in international and domestic arbitration as well as the annex litigation proceedings. He holds a Master's degree from the University of Lucerne and an LL.M. degree from the University of California, Berkeley. In 2010, he started as a trainee at Wenger & Vieli and returned to the firm in 2012 after being admitted to the bar of the Canton of Zurich. Mr Peter has acted as arbitrator, party representative and as secretary to the arbitral tribunal under different sets of arbitration rules.

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Q. Could you outline some of the current market challenges at the centre of commercial disputes in Switzerland?

A: Arbitration has grown in popularity in non-traditional regions, such as the Far East and Africa, which has increased the competition for arbitral institutions and historical seats of arbitration, including Switzerland. In addition, international commercial courts have emerged, which may provide a true alternative to both local state courts and arbitration, increasing the competition further. The biggest current challenge is the COVID-19 pandemic, which has required immediate changes be made to the way in which proceedings and hearings are conducted. The arbitration community responded and adapted very quickly to the crisis by providing new tools and guidelines. We assume that these changes will have long-term effects and will increase efficiency and reduce costs in arbitration going forward.

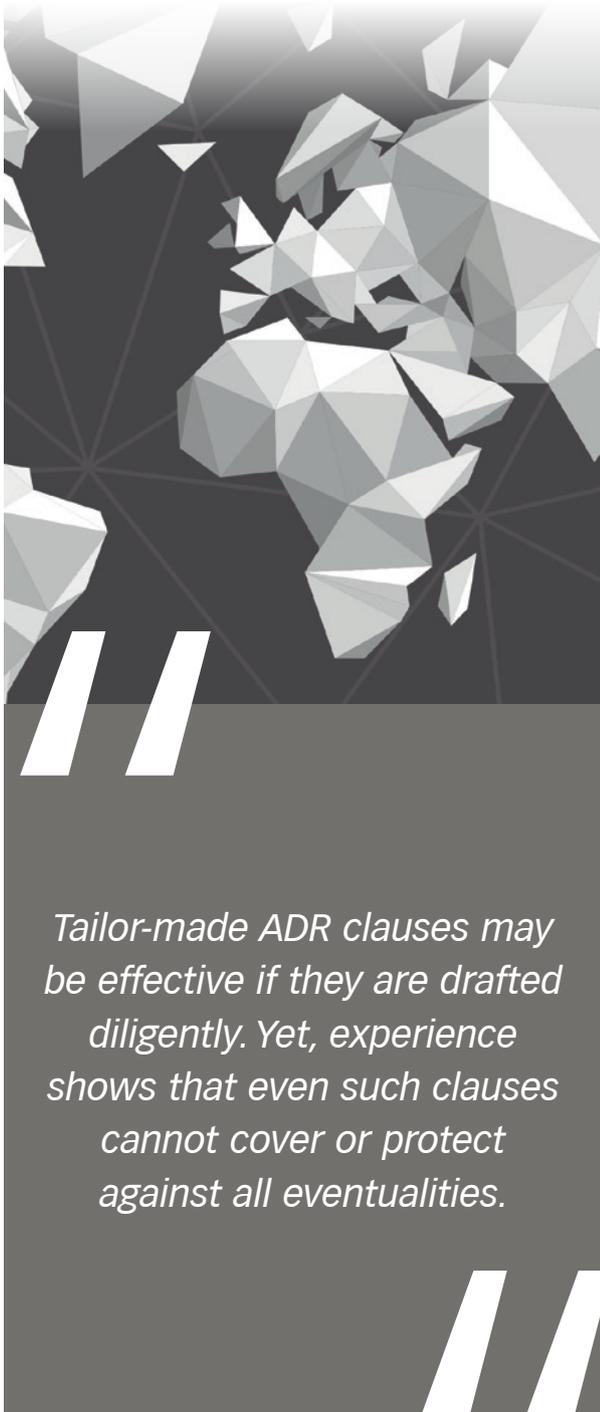
Q. What general advice can you offer to companies on implementing an effective dispute resolution strategy to deal with conflict, taking in the pros and cons of

mediation, arbitration, litigation and other methods?

A: Generally, provided that the business relationship and the circumstances of the dispute allow, we strongly encourage parties to negotiate and enter into amicable settlement discussions. While a combination of different dispute resolution mechanisms is possible, any multi-tier alternative dispute resolution (ADR) clause should be lean. The idea is that, once a dispute has been escalated to top management level, such a dispute can be resolved swiftly and efficiently, without requiring management to waste valuable time throughout several long-lasting stages. Arbitration remains a widely accepted and effective ADR mechanism, but it will not be the appropriate choice for all disputes. Despite its advantages, the question of costs clouds the positive perception of arbitration and it is the task of practitioners to preserve the reputation of arbitration.

Q. To what extent are companies in Switzerland likely to explore alternative

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dispute resolution (ADR) options before engaging in litigation?

A: Parties seated in Switzerland are accustomed to conciliation proceedings, as set forth in civil proceedings. Hence, parties are open to negotiate before entering fully adversarial procedures. Mediation has seen a significant leap in popularity, having been explicitly included as an alternative means of dispute resolution in the code of civil procedure in 2011. For both domestic and international disputes, mediation can be a viable form of dispute resolution, while simultaneously maintaining a business relationship in the future. With the introduction of provisions for expedited arbitrations, many smaller disputes are being settled by arbitration. Since the state courts in Switzerland are efficient and fast in rendering their decisions in comparison to other countries, they usually remain a good option for resolving domestic disputes.

Q. How would you describe arbitration facilities and processes in Switzerland? Are local courts supportive of the process?



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A: Current statistics show that Switzerland remains one of the preferred seats of arbitration. This can be attributed to several factors, including the country's political neutrality, its geographical convenience, its well-developed legal system, its excellent infrastructure and the vast pool of experienced practitioners from which parties can choose. Swiss legislation, as well as the practice of the Swiss courts, is very arbitration friendly. In principle, an arbitral award may only be challenged before the Swiss Federal Supreme Court and only on very limited grounds. Further, Switzerland is party to the 1985 New York Convention, making enforcement of arbitral awards even easier than that of foreign state court judgments.

Q. What practical challenges need to be dealt with when undertaking complex international, multijurisdictional disputes in Switzerland?

A: There are no particular practical challenges which need to be addressed. Swiss practitioners are well trained in handling complex multijurisdictional disputes and cater to a wide array of

nationalities, both as arbitrators and counsels.

Q. What considerations should companies make when drafting a dispute resolution clause in their commercial contracts to address the possibility of future disputes?

A: It is difficult to draft the perfect dispute resolution clause that will cover all potential scenarios. In general, we suggest using the model clauses provided by arbitral institutions, as they keep any risk of flaws or irregularities to a minimum. Tailor-made ADR clauses may be effective if they are drafted diligently. Yet, experience shows that even such clauses cannot cover or protect against all eventualities. Further, the more detailed a dispute resolution clause is, the higher the risk that it may lead to problems or even be considered pathological. If a company wishes to introduce a multi-tier ADR clause, it should provide for a simple and lean mechanism, with only a few steps and clear time indications. Any dispute resolution clause should be the key to solving a dispute, and not become a matter of dispute itself. □

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WENGER & VIELI LTD. is a law firm with offices in Zurich and Zug. For more than 40 years, the firm has been advising its national and international clients primarily in all areas of business and tax law. Providing counsel on a personal level and having small teams attend to its clients allows the firm to respond quickly and individually to clients' needs. Wenger & Vieli Ltd. advises its clients in a productive, goal-oriented and efficient manner.

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