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Arbitration in Switzerland



Rainer Füeg and Urs Weber-Stecher
Swiss Chambers' Arbitration Institution

Arbitration in Switzerland has a long and distinguished tradition. In 1869, the *Basler Börsenverein* – a precursor to the Basel Chamber of Commerce – published its first arbitration rules in order to resolve disputes between its members. In 1911, the Zurich Chamber of Commerce established its first commercial arbitration court, more than 10 years before the International Chamber of Commerce (ICC) established its International Arbitration Court in Paris. Not long after, the Geneva Chamber of Commerce started to offer arbitration services as well, and other chambers followed later in the 20th century.

The Geneva Convention on the Execution of Foreign Arbitral Awards, 1927, set the first international standards for arbitration proceedings and provided for the execution of arbitral awards in member states. Switzerland was one of the first countries to ratify this Convention, which enabled Swiss arbitration to become an international service. An even more important step towards a worldwide arbitration system was the New York Convention of 1958, which boosted arbitration in Switzerland and elsewhere. After World War II, many foreign states and private parties discovered Switzerland as a convenient and reliable place for settling disputes by arbitration, as proceedings were private and confidential, and Switzerland was centrally located and neutral. This political element was important, as many of the early cases concerned business dealings between Eastern countries and the Western hemisphere.

Swiss Arbitration Law

The Swiss law covering international arbitration is guided by the principles of the UNCITRAL Model Law on Arbitration. The 17 articles of the 12th Chapter of the Federal Statute of International Private Law (the 12th Chapter) are a proven and lean law for international arbitration cases. The 12th Chapter is applicable to all arbitrations seated in Switzerland if, at the time of the conclusion of the arbitration agreement, at least one of the parties had neither its domicile nor its habitual residence in Switzerland. In 2011, the Swiss Code on Civil Procedure (CPC) was revised and now contains modern arbitration rules for domestic arbitrations, which may also be applied to international cases, if the parties so agree.

Swiss arbitration law does not allow for interference by state courts. Switzerland is the only significant place of arbitration where, in clearly defined cases, appeals against awards may be brought directly to the country's highest court. Article 190 of the 12th Chapter limits challenges against Swiss awards in international cases to only five grounds:

- the arbitrators were not properly appointed;
- the tribunal wrongly accepted or declined jurisdiction;
- the tribunal's decision went beyond the claims submitted or didn't cover items of the claim;
- the principle of equal treatment or the right to be heard were violated; or
- the award is incompatible with public policy.

Experience shows that the Swiss Federal Supreme Court favours a pronounced policy of non-interference. Only about 5 per cent of

the actions for annulment to the Swiss Federal Supreme Court are partially or totally successful. In addition, if both arbitration parties are non-Swiss, they may exclude any challenge of the award by entering into a written exclusion agreement (article 192). In such a case, no action for annulment is possible against a Swiss award, at least not in Switzerland. As a rule, the Swiss Federal Supreme Court will render a decision within six to eight months, which avoids the risk of costly and lengthy post-arbitration litigation.

The Swiss Chambers' Arbitration Institution

The Swiss Rules of International Arbitration of 2004

Efforts to harmonise the arbitration systems of the various chambers of commerce in Switzerland date back to the late 1990s, when it was felt that a single Swiss international arbitration service would be much easier to promote worldwide than different rules provided by a multitude of local chambers of commerce. In the fall of 2003, the Chambers of Commerce of Basel, Berne, Geneva, Lausanne, Lugano and Zurich, later joined by the Chamber of Commerce of Neuchâtel, adopted the Swiss Rules of International Arbitration, which entered into force on 1 January 2004 and replaced the former international arbitration rules of said chambers.

In 2007, the various chambers founded the Swiss Chambers' Arbitration Institution, an association incorporated under Swiss Laws as a separate entity, as the body to provide arbitration (and mediation) services. In order to administer arbitrations under the Swiss Rules, the Swiss Chambers' Arbitration Institution established an Arbitration Court composed of 27 experienced international arbitration practitioners. The Court renders the decisions as provided for under the Swiss Rules. It delegated some of its powers to a Special Committee, particularly regarding decisions on the seat of the arbitration, when arbitrators are challenged, are to be replaced or when their appointment is to be revoked.

According to Swiss tradition, and respecting the different linguistic and economic regions of Switzerland, the Secretariat of the Swiss Chambers' Arbitration Institution is working in a decentralised way. Having offices all over Switzerland that are able to administer cases not only in English, but also – if the parties so wish – in German, French and Italian, is one of the strengths of the Swiss Rules. It is not only the knowledge of the language but also the experience with the cultures of the respective communities that make up this particular strength.

The Swiss Rules give the tribunal and the parties leeway to structure proceedings. Parties are free to decide on the applicable law, the seat of the arbitration and the place of the hearings, and they may designate their arbitrators freely without being restricted by a list. The institution maintains a strict quality control of the arbitration proceedings; for example, by the process of confirming the arbitrators, by deciding whether the cost of the proceedings are appropriate and by demanding a timetable for each arbitration in order to have an eye on its duration. However, the control by the institution is limited to the minimum required to guarantee a proper conduct of the proceedings without too much interference delaying the process.

Since its foundation in 2004, roughly 700 cases have been filed under the Swiss Rules, almost all of them international cases. Less than a quarter of the parties are domiciled in Switzerland, while more than 60 per cent are domiciled all over the world, with a heavy emphasis on western Europe. Two-thirds of the cases are heard in English, and matters in dispute mainly concern the purchase and sale of goods or shares, distribution and agency, construction and service contracts. The average amount in dispute is 16.5 million Swiss francs. Almost 30 per cent of the arbitrators are non-Swiss, of which most come from western Europe and a few from eastern Europe, Asia and North America.

Revision of the Swiss Rules in 2012

In 2012, the Swiss Rules of International Arbitration were revised for the first time following the revision of the Swiss Code on Civil Procedures. The specific advantages that were crucial for the success of the Swiss Rules – the light administration, the power of the parties to adopt the proceedings to the needs of their case, the fast rendering of decisions by the arbitral tribunals and the quality of proceedings and awards – were left unchanged or reinforced where appropriate. In addition, some changes were made in order to use the Swiss Rules in domestic arbitrations as well.

Some additional changes were made to render the proceedings faster. Under the new article 15.7, all participants are under obligation to make every effort to contribute to the efficiency of the proceedings and avoid unnecessary costs and delays. Any action that hinders such efficiency may have an influence on the allocation of costs. Challenges to arbitrators must be raised within 15 days after the party became aware of the grounds giving rise to the challenge. The time limits for paying deposits at the beginning of the procedure have been shortened from 30 to 15 days, and in expedited procedures, a provisional deposit of 5,000 Swiss francs will be requested from the claimant immediately, so the arbitral tribunal may start proceedings on the day on which it is confirmed without having to wait for receipt of the advance of costs.

The expedited procedure has been a very welcome feature of the Swiss Rules right from the beginning and since then almost 40 per cent of the cases underwent an expedited procedure. In an expedited procedure, the case is referred to a sole arbitrator and the parties are entitled to submit only one statement of claim and one statement of defence. Only one hearing is held, unless the parties have agreed that the case is to be decided on the basis of documentary evidence only. The expedited procedure may be agreed on by the parties in any case whatsoever, but it is compulsory for disputes not exceeding 1 million Swiss francs. Awards are to be made within six months from the date on which the files were transmitted to the arbitral tribunal. The records of Swiss Chambers' Arbitration Institution show that cases under the expedited procedure were indeed settled or terminated by an award after 185 days on average.

The rules for consolidation of proceedings have been modified so that they are fairer for all parties involved (article 4.1). In a case of consolidation of proceedings, all parties shall now be deemed to have waived their right to designate an arbitrator, including those involved in the first arbitration into which the new case is to be consolidated.

One of the few completely new features of the revised Swiss Rules is 'emergency relief' (article 43 Swiss Rules). Unless the parties have agreed otherwise, a party may apply for emergency relief proceedings even before the arbitral tribunal is constituted. The Court will appoint and transmit the file to a sole emergency arbitrator unless there is manifestly no agreement to arbitrate referring to the Swiss Rules, or it appears more appropriate to proceed with the constitution of the arbitral tribunal. The decision on the

application is to be made within 15 days from the date on which the file was transmitted to the emergency arbitrator. It has the same effect as a decision of an arbitral tribunal on interim measures. The decision is binding upon the parties until the arbitral tribunal to be constituted modifies it or renders its final award.

ICC, CAS and WIPO

Switzerland is not only the home of the Swiss Chambers' Arbitration Institution, but also of the Court of Arbitration for Sports in Lausanne (CAS) and the WIPO in Geneva, and it is the most important place of arbitration for ICC cases.

In ICC arbitrations, Swiss law is the second most often used substantive law (after English law), and Switzerland is one of the nations that furnish the most arbitrators.

CAS hears more than 300 cases per year resolving disputes directly or indirectly related to sports; either disputes on the execution of sports-related contracts, or disciplinary cases (often doping-related) between athletes and sports federations.

WIPO (which has offices in many other countries as well) hears more than 2,500 cases per year. The subject matter includes both contractual disputes (eg, patent and software licences, trademark coexistence agreements, distribution agreements for pharmaceutical products and research and development agreements) and non-contractual disputes (eg, patent infringement).

Other international arbitrations, which have either the seat of arbitration in Switzerland or at least hearings conducted in Switzerland, are administered by well-known arbitration institutions such as DIS, SCC, LCIA or VIAC.

Education, arbitral services and the arbitral community

Switzerland is very active in the field of continuing education and has a very active arbitration community, organised within the Swiss Arbitration Association (ASA). With more than 1,300 members – of which more than a third are living outside Switzerland – ASA is one of the leading voices in the world of international arbitration, and its quarterly bulletin, as well as its congresses and international workshops for training arbitrators, are of the highest quality.

The Swiss Arbitration Academy, together with the Universities of Lucerne and Neuchâtel, offers a postgraduate programme in arbitration (Certificate of Advanced Studies). This programme is a unique combination of academic education and practical hands-on training with renowned international practitioners. It is an intense four-week programme on international arbitration offered over the course of nine months. The training is designed for lawyers, in-house counsel and other professionals interested in international dispute resolution (www.swiss-arbitration-academy.ch).

The Geneva Master (LLM) in International Dispute Settlement (MIDS) at Geneva University Law School offers a one-year full-time graduate degree programme providing the opportunity for an in-depth and high-profile study of international dispute settlement. The programme covers all current approaches to the subject matter and delves into today's relevant fields, such as commercial and investment arbitration, WTO dispute resolution and proceedings before the ICJ (www.mids.ch).

The Faculty of Law of the University of Zurich offers a specialisation course in International Contract Law and Arbitration Law as part of the LLM in International Business Law, and plans to start an LLM in International Litigation and Arbitration in 2014 (www.llm.uzh.ch/index_en.html).

At the beginning of 2013, a new service was offered to the arbitral community: the SwissArbitrationHub. This web-based service enables easy access to information and services needed for organising hearings in Switzerland, be it hearing rooms, accommodation, interpreters or court reporters (www.swissarbitrationhub.com).

About the authors

Dr Rainer Füg is the executive director of the Swiss Chambers' Arbitration Institution and was the institution's president from its foundation in 2004 until the end of 2012. He is a member of the board of the Swiss Arbitration Association (ASA) and was the secretary general of the association from 1993 to 2012.

Dr Urs Weber-Stecher (LLM) is a partner of Wenger & Vieli Ltd in Zurich, Switzerland, where he heads the international arbitration practice. He is a member of the Arbitration Court of the Swiss Chambers' Arbitration Institution and has served as counsel, sole arbitrator, co-arbitrator and chairman in numerous cases under the Swiss Rules, ICC, UNCITRAL, CEPANI and in ad hoc proceedings. Since 2001, Mr Weber has been a teaching fellow for international arbitration at the University of Zurich, Faculty of Law. He is also the chairman of the board and member of the Academic Council of the Swiss Arbitration Academy (www.swiss-arbitration-academy.ch). He serves as a member of the Swiss Commission of Arbitration of the ICC and the ICC Commission on Arbitration.



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