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Arbitration in Switzerland - More Attractive Than Ever

Globally, Switzerland is one of the most preferred locations of choice for international arbitration proceedings. From early 2021, arbitration in Switzerland will become even more attractive as parties may choose English not only as a language in the actual arbitration proceedings, but also in subsequent setting-aside applications to the Swiss Federal Supreme Court.

As a politically neutral country, Switzerland has a long tradition of arbitration. Local chambers of commerce started offering professional arbitration services at the end of the 19th century. The importance of Switzerland as neutral forum for the resolution of international disputes constantly increased in the course of the 20th century. Today, Switzerland is home to many international organizations and dispute settlement institutions, such as the United Nations, World Trade Organization, World Intellectual Property Organization (WIPO) and the Court of Arbitration for Sport (CAS/TAS). It regularly hosts major international arbitration conferences and attracts a wide range of cross-border arbitration cases, particularly from civil law countries across Europe, the Middle East, Asia and Africa.

Throughout the past 20 years, Switzerland has been the second most frequently chosen seat for arbitrations under the auspices of the International Chamber of Commerce (ICC), while Swiss law has been one of the four most commonly chosen laws in ICC proceedings, and together with French law the most commonly chosen civil law. Thanks to the 1958 New York Convention, Swiss arbitral awards can today be recognized and enforced in more than 160 countries around the world, including the People’s Republic of China, Singapore, Vietnam, Malaysia, the Philippines and many African countries.

The legal framework for international arbitration proceedings seated in Switzerland is set out in Chapter 12 of the Swiss Private International Law Act (“PILA”). These statutory provisions reflect the arbitration-friendly stance of the Swiss legislator and Swiss courts. Arbitral tribunals are, together with the parties, invested with broad powers to organize the proceedings as they see fit. The establishment of the facts and application of the law lies in the hands of tribunals, with possible grounds for challenges against arbitral awards essentially being limited to flagrant violations of basic procedural principles and evident breaches of public policy. Setting-aside applications are directly referred to Switzerland’s highest court, the Swiss Federal Supreme Court, and are generally dealt with within four to six months, thus reducing the overall duration of proceedings.

In their efforts to ensure Switzerland’s continued attractiveness as place of arbitration for international parties, the Swiss Arbitration Association (ASA) and the vibrant Swiss arbitration community continuously strive to adjust the Swiss arbitration offering to the evolving needs of users around the world, with a view to offering efficient and economical services. Most recently, these efforts resulted in the adoption of limited updates to Chapter 12 of PILA to modernize and clarify certain aspects of the Swiss arbitration law without affecting the key elements to which it owes its success.

Most of the updates – which were adopted by the Swiss parliament in June 2020 and which are expected to enter into force in early 2021 – are merely targeted at transposing case law of the Swiss Federal Supreme Court into statutory law to enhance its accessibility and transparency for foreign parties. Thus, the amended act expressly states that arbitration agreements can also be...
made by email or through other forms of electronic communications, as these communications fall under the concept of “communications evidenced by a text” already provided for in PILA. Additionally, the new rules provide that arbitration clauses can validly be included in unilateral acts such as wills and trust deeds, as well as in corporate by-laws, with the consequence that also disputes which are not strictly of a contractual nature can be resolved in arbitration. Further changes are intended to facilitate the constitution of tribunals in situations where the parties chose “arbitration in Switzerland” without specifying the city in which the tribunal is to have its seat.

From a practical perspective, the most important change concerns the possibility to use English as a language not only in the actual arbitration proceedings, but also in subsequent setting-aside applications to the Swiss Federal Supreme Court. As a general rule, the court only accepts submissions in one of Switzerland’s official languages (German, French, Italian and Rumantsch), although most of its decisions in arbitral matters get translated into English by members of the arbitration community. With the change of law now adopted, international parties will additionally have the possibility to submit their written briefs to the court in English, thereby making it easier for foreign parties to appreciate the arguments brought forward in a potential setting-aside application. This change will undoubtedly help to save time and costs at the setting-aside stage and contribute to further cement Switzerland’s position as a place of choice for the resolution of international disputes.