

International commercial arbitrations in Switzerland

« *Why Switzerland is one of the preferred venues for international commercial arbitrations* »

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Switzerland = one of the preferred venues for international commercial arbitrations

- The Lawyer (13 October 2016):

*„Swiss law trumps all: Why arbitration still gravitates towards the European hub“**

- White & Case 2012 Arbitration Survey:

*“London, Paris, New York and **Geneva** are the seats that were used most frequently by respondents over the past five years”***

- ICC statistics: Swiss cities ranked first or second for many years among the chosen venues for ICC arbitration proceedings:

*„For more than a hundred years, Switzerland has been one of the preferred venues for hosting international arbitrations, whether in ad hoc proceedings or in proceedings administered under the rules of the leading arbitration institutions. Since 2000, Swiss cities have invariably been ranked first or second among the chosen venues for ICC arbitration proceedings worldwide.“****

* Source: <https://www.thelawyer.com/swiss-law-trumps-arbitration-still-gravitates-towards-european-hub/> ; ** Emphasis added; *** Source: <http://www.arbitration-ch.org/en/arbitration-in-switzerland/index.html>

Overview of Reasons

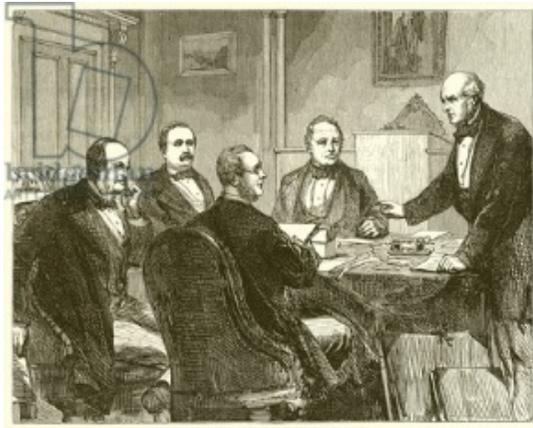
A. General Conditions

1. Tradition
2. Geographical position
3. Political neutrality and stability
4. Infrastructure

B. Legal System

1. Swiss substantive Law
2. Arbitration friendly “Arbitration Act”

Tradition



Meeting of the Arbitrators on the Alabama Claims

*“The Alabama Claims were a series of demands for damages sought by the government of the United States from the United Kingdom in 1869, for the attacks upon Union merchant ships by Confederate Navy commerce raiders built in British shipyards during the American Civil War. The claims focused chiefly on the most famous of these raiders, the CSS Alabama, which took more than sixty prizes before she was sunk off the French coast in 1864. After international arbitration endorsed the American position in 1872, Britain settled the matter by paying the United States \$15.5 million, ending the dispute and leading to a treaty that restored friendly relations between Britain and the United States. That international arbitration established a precedent, and the case aroused interest in codifying public international law.”***

First meeting of the tribunal took place on 15 December 1871 in Geneva, Switzerland

*Source: www.bridgemanart.com; ** Source: https://en.wikipedia.org/wiki/Alabama_Claims

Switzerland's geographical position



Source: www.basel-virtuel.ch



Source: www.wikipedia.org

Political Neutrality and Stability



This Swiss coin, coined in 1879, is still valid today, whereas Germany had two monetary reforms since 1879, in 1924 (after World War I) and in 1948 (after World War II).

* Source: www.wikipedia.org

Infrastructure



*1



*2



*3

- *1 Source: www.flughafen-zuerich.ch
- *2 Source: www.thedoldergrand.com
- *3 Source: www.sbb.ch

Swiss substantive Law

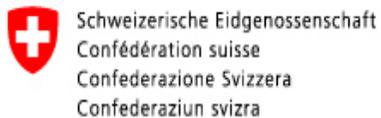
Regularly the substantive law of choice when a “neutral” substantive law is required, *e.g.* regarding a contract between a German seller and a Chinese buyer.

Why?

- Easily accessible and intelligible
- Liberal legal framework with strong focus on party autonomy
- Balanced solutions tested in countless commercial contracts
- Extensive body of precedents and case law

Swiss Substantive Law

Easy accessible and intelligible



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Classified Compilation of Federal Legislation

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English is not an official language of the Swiss Confederation. This translation is provided for legal force.



Code of Obligations

Division One: General Provisions

Title One: Creation of Obligations

Section One: Obligations arising by Contract

Art. 1

- A. Conclusion of the contract
- 1 The conclusion of a contract requires a mutual expression of intent by the parties.
 - 2 The expression of intent may be express or implied.
 1. In general

Swiss Substantive Law

Liberal legal framework

Code of Obligations

Division One: General Provisions

Title One: Creation of Obligations

Section One: Obligations arising by Contract

Art. 19

E. Terms of the contract

I. Definition of terms

1 The terms of a contract may be freely determined within the limits of the law.

2 Clauses that deviate from those prescribed by law are admissible only where the law does not prescribe mandatory forms of wording or where deviation from the legally prescribed terms would contravene public policy, morality or rights of personal privacy.

Swiss Substantive Law

Balanced solutions

Swiss Civil Code

Art. 2

B. Scope and limits of legal relationships

I. Acting in good faith

¹ Every person must act in good faith in the exercise of his or her rights and in the performance of his or her obligations.

² The manifest abuse of a right is not protected by law.

Swiss Substantive Law

Extensive body of precedents and case law



Source: <http://www.ius.uzh.ch/de/library/about.html>

Zurück zur Einstiegsseite Grössere Schrift

Weitere Urteile ab 2000

[Löschen](#)
[Hilfe](#)

Suchen in:

- allen Urteilen
- Staats- und Verwaltungsrecht
- Privatrecht u. SchKG
- Strafrecht
- Sozialversicherungsrecht

[mehr...](#)

Zwischen: und (tt.mm.jjjj)

Suchtipp

Um das exakte Vorkommen eines Wortes zu garantieren, setzen Sie direkt davor ein Pluszeichen (+).
Beispiel: [Werbeverbot +Fernsehverordnung](#)



Source: <http://www.bger.ch/>



Source: <http://baublatt.ch>

Arbitration friendly legal framework

Switzerland's international "Arbitration Act" (Chapter 12 of the Private International Law Act; PILA) is an arbitration-friendly statute which recognises the principle of the party autonomy to the fullest possible extent.

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Bundesgesetz über das Internationale Privatrecht
(IPRG)
vom 18. Dezember 1987 (Stand am 1. Juli 2014)

Art. 182(1) of the Swiss PILA:

« *The parties may, directly or by reference to rules of arbitration, determine the arbitral procedure; they may also submit the arbitral procedure to a procedural law of their choice.* »

Key features of Switzerland's Arbitration Law -1-

- **Compatibility with the arbitration rules** of all the major arbitration institutions (ICC, LCIA, AAA, etc.).
- **Liberal approach re procedure:** Freedom to retain counsel of own choice, to determine the language of the proceedings and to select any applicable procedural rules.
- **Liberal approach re constitution of the AT:** Free choice of arbitrators.
- **Liberal approach re arbitrability:** Any dispute involving a financial interest is arbitrable.

Key features of Switzerland's Arbitration Law -2-

- **Liberal approach re arbitration agreement:** *In favorem validitatis*: An arbitration agreement is valid if it conforms to any of the following three laws: that chosen by the parties in the arbitration agreement; that applicable to the merits of the dispute; or Swiss law.
- **Intervention of the State Courts** only in support of an arbitration.
- **Last, but not least:** Only very limited grounds for potential challenges of an award.

Challenges of Swiss Arbitral Awards

-1-

- **No review on the merits** of the award, be it on a question of fact or a question of law.
- **Only limited grounds for an appeal:**
 - The arbitral tribunal was incorrectly appointed or constituted;
 - The arbitral tribunal has wrongly decided on its jurisdiction;
 - The award has gone beyond the claims submitted to the arbitral tribunal or the arbitral tribunal has failed to decide one of the claims;
 - The principle of equal treatment of the parties or their right to be heard in an adversarial procedure has not been observed;
 - The award is not compatible with public policy.

Challenges of Swiss Arbitral Awards

-2-

- **Fast-track one-court** proceedings re challenges of Swiss arbitral awards:
 - Only one court: Swiss Federal Supreme Court (www.bger.ch);
 - Challenges to be filed within 30 days of the award being rendered;
 - Challenges being handled swiftly: 3 to 6 months on average;
 - Chances of success very low (approx. 7% concerning commercial arbitrations).
- Possibility for non-Swiss parties to expressly exclude, partially or entirely, the challenge of awards.



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For more information, please visit:

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

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

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