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Contents

1. General  p.4
  1.1 Prevalence of Arbitration  p.4
  1.2 Trends  p.4
  1.3 Key Industries  p.4
  1.4 Arbitral Institutions  p.4

2. Governing Legislation  p.4
  2.1 Governing Law  p.4
  2.2 Changes to National Law  p.4

3. The Arbitration Agreement  p.5
  3.1 Enforceability  p.5
  3.2 Arbitrability  p.5
  3.3 National Courts’ Approach  p.5
  3.4 Validity  p.6

4. The Arbitral Tribunal  p.6
  4.1 Limits on Selection  p.6
  4.2 Default Procedures  p.6
  4.3 Court Intervention  p.6
  4.4 Challenge and Removal of Arbitrators  p.6
  4.5 Arbitrator Requirements  p.6

5. Jurisdiction  p.6
  5.1 Matters Excluded from Arbitration  p.6
  5.2 Challenges to Jurisdiction  p.7
  5.3 Circumstances for Court Intervention  p.7
  5.4 Timing of Challenge  p.7
  5.5 Standard of Judicial Review for Jurisdiction/Admissibility  p.7
  5.6 Breach of Arbitration Agreement  p.7
  5.7 Third Parties  p.7

6. Preliminary and Interim Relief  p.7
  6.1 Types of Relief  p.7
  6.2 Role of Courts  p.8
  6.3 Security for Costs  p.8

7. Procedure  p.8
  7.1 Governing Rules  p.8
  7.2 Procedural Steps  p.8
  7.3 Powers and Duties of Arbitrators  p.8
  7.4 Legal Representatives  p.8

8. Evidence  p.9
  8.1 Collection and Submission of Evidence  p.9
  8.2 Rules of Evidence  p.9
  8.3 Powers of Compulsion  p.9

9. Confidentiality  p.9
  9.1 Extent of Confidentiality  p.9

10. The Award  p.9
  10.1 Legal Requirements  p.9
  10.2 Types of Remedies  p.10
  10.3 Recovering Interest and Legal Costs  p.10

11. Review of an Award  p.10
  11.1 Grounds for Appeal  p.10
  11.2 Excluding/Expanding the Scope of Appeal  p.10
  11.3 Standard of Judicial Review  p.11

12. Enforcement of an Award  p.11
  12.1 New York Convention  p.11
  12.2 Enforcement Procedure  p.11
  12.3 Approach of the Courts  p.11

13. Miscellaneous  p.11
  13.1 Class-action or Group Arbitration  p.11
  13.2 Ethical Codes  p.11
  13.3 Third-party Funding  p.11
  13.4 Consolidation  p.11
  13.5 Third Parties  p.11
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1. General

1.1 Prevalence of Arbitration
Switzerland is one of the leading places of arbitration worldwide. The local hubs are Geneva (in the French-speaking part of Switzerland) and Zurich (in the German-speaking part). There is also some international arbitration activity in Lausanne (the seat of the Court of Arbitration for Sport, CAS), Lugano (in the Italian-speaking part), and Basel (a pharmaceutical hub in the German-speaking part).

The importance of Switzerland as a place of arbitration stems from Switzerland’s traditional neutrality, its cultural diversity as reflected by the four different official languages of the country and, most importantly, the quality and integrity of the legal profession.

Switzerland as a place of arbitration is often chosen together with Swiss substantive law because the latter has influenced the making of the laws of some countries in South Eastern Europe and beyond, the most prominent among them being Turkey. Swiss substantive law is, therefore, in many cases both neutral and familiar to both parties in a dispute – this being an advantage that only few substantive laws have. Other advantages of Swiss substantive law are its flexibility and the high priority of parties’ agreements.

Furthermore, Switzerland also has a tradition of efficiently administering small and mid-size disputes, with the Swiss Rules of International Arbitration stipulating that disputes up to a value of CHF1 million are dealt with in expedited proceedings within six months. The expedited proceedings are increasingly also chosen by parties in larger disputes when time is of the essence.

Finally, Switzerland promotes efficient international arbitration because an arbitral award that was rendered by a tribunal with its seat in Switzerland can only be set aside for very limited reasons, and only the Swiss Federal Tribunal (the highest Swiss judicial authority) is competent to hear such a case. There is even the possibility to exclude any challenge proceedings (see 11.2 Excluding/Expanding the Scope of Appeal).

1.2 Trends
It is a growing trend in the jurisprudence of the Swiss Federal Tribunal to further enhance the efficiency of challenge proceedings through a stricter interpretation of the parties’ rights of appeal. A prime example may be the Swiss Federal Tribunal’s jurisprudence on infringements of the parties’ right to be heard. For many years, the Swiss Federal Tribunal held that the right to be heard was of a ‘formal nature’ and infringements of the right to be heard automatically resulted in the right to challenge arbitral awards in Switzerland for that reason. In recent judgments (such as the decision of the Swiss Federal Tribunal No 4A_424/2018), the Swiss Federal Tribunal has increasingly parted from the former automatism. In order to be successful in challenge proceedings, an applicant today must not only (i) demonstrate an infringement of the right to be heard on an important argument of the applicant, but also (ii) show that such violation had an adverse impact on the outcome of the dispute. This jurisprudence contributes to more efficient arbitration proceedings and alleviates ‘due process paranoia’. At the same time, the threshold for successful challenge applications has been raised again.

In addition, diversity remains a huge issue in and beyond the arbitration community.

1.3 Key Industries
There has been no exceptional increase of arbitration proceedings in any particular industry in Switzerland.

Key industries that usually appreciate arbitration as dispute resolution method are the pharmaceutical industry, the construction industry, commodity traders, as well as exporters of technical equipment.

The financial industry in Switzerland is not yet a frequent user of arbitration and it will be interesting to follow the developments in this regard.

1.4 Arbitral Institutions
The leading arbitration institutions are the International Chamber of Commerce (ICC Rules) and the Swiss Chambers’ Arbitration Institution (Swiss Rules).

The Swiss Association of Engineers and Architects (SIA) has recently published new arbitration rules specifically designed for construction disputes. These rules are not publicly available and there are no statistics on their use for the time being.

2. Governing Legislation

2.1 Governing Law
International arbitration proceedings in Switzerland are governed by the 12th Chapter of the Swiss Private International Law Act (PILA), which comprises 19 articles (Article 176 to Article 194 PILA, the so-called ‘lex arbitri’).

The PILA is not directly based on the UNCITRAL Model Law, although it is evident that the drafters of the PILA were aware of the ideas and concepts of the Model Law, and some Swiss scholars even state that the spirit of the Model Law can be recognised in many provisions of the PILA.

2.2 Changes to National Law
The Swiss legislature currently envisages a minor revision of the Swiss international arbitration law (ie, the 12th Chapter
of the PILA). A first draft of an expert committee was circulated to interested bodies for consultation in 2017 and a revised draft was released in 2018 (final draft). The amendments aim (inter alia) to reflect already existing continuous practice of the Swiss Federal Tribunal for the sake of transparency, and to make the legal framework even more arbitration-friendly. For example, the current draft provides for the possibility to file submissions in challenge proceedings before the Swiss Federal Tribunal in the English language. At the same time, no major legal changes of the Swiss international arbitration law are expected to take place. Subject to further amendments in the legislative process, the revised law may enter into force in 2020.

In the following, the most important amendments of the Swiss lex arbitri (final draft) will be noted in the relevant sections.

3. The Arbitration Agreement

3.1 Enforceability

From a formal point of view, the arbitration agreement is required to be evidenced by text (so-called 'text form', Article 178.1 PILA); therefore, arbitration agreements in emails or telefax communications are formally valid in Switzerland.

In a recent landmark decision (decision of the Swiss Federal Tribunal No 4A_428/2008 – the so-called 'Vivendi' decision), the Swiss Federal Tribunal confirmed that the text form requirements are congruent with those of Article II.2 of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958 (the New York Convention). It further held that in line with Article II.2 of the New York Convention, an arbitration agreement can bind non-signatories – eg, in a scenario where a non-signatory is involved in the performance of an agreement and implicitly declares, by its conduct, that it intends to be party to the arbitration agreement. Similarly, the Swiss Federal Tribunal confirmed that an arbitration agreement can be implicitly extended and bind a non-signatory without the extension being evidenced by text.

From a substantive point of view, the minimal requirements for an arbitration agreement are as follows:

- it provides for an agreed exclusion of the state court jurisdiction in favour of arbitral jurisdiction;
- it relates to a defined dispute (eg “all disputes arising out of or in connection with a certain contract”); and
- it details a definable arbitral tribunal.

Finally, it should be noted from a substantive point of view that an arbitration agreement is also considered valid in Switzerland if it meets the substantive legal requirements of either the law chosen by the parties or the law that applies to the merits of the case or Swiss law (Article 178.2 PILA; principle of favor validitatis).

### Swiss lex arbitri revision

The final draft clarifies that the rules of lex arbitri also apply to arbitration agreements in unilateral legal instruments (such as last wills).

3.2 Arbitrability

Article 177.1 PILA provides that every claim "of financial interest" ("vermögensrechtlich") may be referred to international arbitration. Claims that concern family status issues (eg, separation, divorce or children-related claims) are thus not arbitrable in Switzerland, and neither are insolvency matters arbitrable which have the aim of dissolving a company for lack of assets. At the same time, a company in insolvency proceedings is still bound by its arbitration agreements (unless the insolvency negatively affects the general legal capacity of an entity according to the decisions of the Swiss Federal Tribunal Nos 4A_118/2014, 138 III 714 and 4A_428/2008 – the so-called 'Vivendi' decision).

One important point for proceedings with state involvement is that Article 177.2 PILA provides that a state or state-owned entity is not entitled to rely on its own law in order to argue that certain issues in dispute are not arbitrable or that it is not capable of being a party in arbitration proceedings. This provision of the PILA can be very useful for any party that contracts with state-owned entities.

3.3 National Courts’ Approach

The Swiss Federal Tribunal considers that (at least) the core of the arbitration agreement (ie, the exclusion of the state courts in favour of arbitration) is of a procedural nature.

If a party starts legal proceedings before state courts in a dispute that is subject to an arbitration agreement, the state court will – first of all – wait and see whether the counterparty objects to state court jurisdiction based on the arbitration agreement. If there is an objection, it will decline its jurisdiction and the claimant will need to start arbitration proceedings. However, the state court will consider the absence of any objection as tacit agreement to proceed before state courts (Article 7 PILA).

Against this background, the (procedural) Swiss approach is slightly different from the (substantive) US approach, where courts positively order parties to attend arbitration proceedings, but the result remains the same: if a valid arbitration agreement exists and one of the parties insists on arbitration, Swiss courts will respect the arbitration agreement by declining their jurisdiction and the parties must proceed with arbitration in order to obtain a decision on the merits.

This approach is in line with Article II.3 of the New York Convention, of which Switzerland is a contracting state.
3.4 Validity

Article 178.3 PILA expressly provides that an arbitration agreement may be considered valid even if the rest of the contract is invalid (so-called ‘doctrine of separability’).

At the same time, there may be situations in which a defect of the main contract also affects the arbitration agreement. This can be the case, for example, if an unauthorised person signed a contract that includes an arbitration agreement. However, in such a situation it would be for the arbitral tribunal (and not a state court) to assess whether the arbitration agreement is valid, since the arbitral tribunal is competent to rule on its own competence (Article 186.1 PILA).

In exceptional cases, an arbitration agreement in a draft contract can even be valid and binding before the main contract is signed. This is the case if an intention to be bound by the arbitration agreement can be established independently of the conclusion of the main contract (see Gabriel/Wicki, Vorvertragliche Schiedszuständigkeit – Pre-contractual Jurisdiction of Arbitral Tribunals, ASA Bull. 2/2009, p 236 et seq for further information on this issue).

4. The Arbitral Tribunal

4.1 Limits on Selection

The parties are free to nominate any arbitrator in line with the arbitration agreement (Article 179.1 PILA).

However, if an arbitrator nominated by a party is not sufficiently independent and/or impartial, she or he may be challenged by the other party, and may be subject to removal and replacement.

It is important to note that such a challenge must be brought forward immediately after a party gains knowledge of the reasons for such a challenge. While the PILA does not provide for a fixed time limit, it is advisable to submit a challenge at the latest within ten days of learning of the respective reasons unless the arbitration agreement – including referenced institutional arbitration rules – provides for a different time limit for challenges.

Swiss lex arbitri revision

For arbitrator challenges, a time limit of 30 days after learning of the respective reasons is provided for in the final draft.

4.2 Default Procedures

If the parties’ chosen method for selecting arbitrators fails, they may approach the state court judge at the place of arbitration (“juge d’appui”) and request that he or she designate an arbitral tribunal (Article 179.2 PILA). Depending on the specific circumstances, the state court judge will either apply the arbitration agreement to the extent possible or, in the absence of any viable agreement, apply the rules of the Swiss Code of Civil Procedure (CCP) and designate the missing members of the arbitral tribunal (Article 362 CCP).

Swiss lex arbitri revision

The final draft clarifies that the juge d’appui may nominate the entire arbitral tribunal in multiparty situations.

4.3 Court Intervention

A state court cannot intervene in the selection of arbitrators unless an arbitrator is rightly challenged and thus removed for lack of independence and/or impartiality. Even in this case, it is not for the state court to designate the replacement of the arbitrator, but rather the replacement will (again) take place according to the relevant provisions in the arbitration agreement.

4.4 Challenge and Removal of Arbitrators

Article 180 PILA governs the challenge and potential removal and replacement of arbitrators. Reasons for challenging an arbitrator include:

- reasonable doubts with respect to impartiality and/or independence;
- a failure to meet characteristics provided for in the arbitration agreement; and
- any further reasons provided for in the arbitration agreement.

Swiss lex arbitri revision

The final draft provides additional rules for the removal and replacement of arbitrators upon joint agreement of the parties or, unilaterally – ie, by one of the parties, in case of incapability of the arbitrator.

4.5 Arbitrator Requirements

According to Article 180 PILA and pertinent jurisdiction of the Swiss Federal Tribunal, arbitrators must be independent and impartial comparable to state court judges (see, for example, the decision of the Swiss Federal Tribunal No 4A_620/2012, paragraph 3.1). The Swiss Federal Tribunal takes note of the IBA Guidelines on Conflict of Interest in International Arbitration on a case-by-case basis, but does not consider itself to be bound by any standards noted therein.

If an arbitrator does not meet the required (high) standard of independence and impartiality, any award that was rendered with his or her participation risks being set aside.

5. Jurisdiction

5.1 Matters Excluded from Arbitration

Any disputes of financial interest (ie monetary value) may be referred to arbitration pursuant to the Swiss lex arbitri (see on the Swiss lex arbitri 2.1 Governing Law and on arbitrable
disputes 3.2 Arbitrability), as long as they are covered by a valid arbitration agreement.

5.2 Challenges to Jurisdiction
The arbitral tribunal can assess whether it is competent to make a decision on the merits of a dispute (Article 186.1 PILA: so-called “competence-competence”). When making use of its competence-competence, the arbitral tribunal may render a decision on its jurisdiction even in lis pendens situations (ie where the same matter is already pending before a state court or a different arbitral tribunal). In such lis pendens situations, the arbitral tribunal is not required to stay its proceedings, unless justified by notable circumstances (Article 186.1bis PILA).

5.3 Circumstances for Court Intervention
The Swiss Federal Tribunal is the only judicial instance that has the power to review any decision on jurisdiction in potential challenge proceedings, if a respective objection is brought forward by a party.

The Swiss Federal Tribunal freely assesses the accurate application of the law in this respect. At the same time, it is not in a position to review the findings of an arbitral tribunal with respect to the facts underlying the award on jurisdiction.

5.4 Timing of Challenge
Only arbitral awards are subject to challenge proceedings and thus also to challenges with respect to the jurisdiction of an arbitral tribunal. At the same time, the parties are required to object to arbitral jurisdiction in their first submission on the merits. Otherwise, the jurisdictional challenge will be barred due to an assumed tacit agreement to arbitral jurisdiction (“materielle Einlassung”; see also 3.3 National Courts’ Approach for the same requirement before state courts).

If arbitral jurisdiction is disputed in arbitral proceedings, the tribunal is generally required to decide on its jurisdiction in a preliminary award, in order to enable an early challenge in this respect (Article 186.3 PILA).

5.5 Standard of Judicial Review for Jurisdiction/Admissibility
The Swiss Federal Tribunal has the power to review fully issues of jurisdiction with respect to the correct application of the law. At the same time, it has no power to review the arbitral tribunal’s findings on the facts of the case (see also 3.3 Circumstances for Court Intervention).

According to recent statistics in 2018, only 11.3% of all jurisdictional challenges have been successful since the PILA was introduced in 1989 (see Dasser/Wojtowicz, Challenges of Swiss Arbitral Awards – Updated Statistical Data as of 2017, ASA Bull. 2/2018, p 276), so it appears fair to conclude that the Swiss Federal Tribunal has remained deferent to reasonable jurisdictional decisions of arbitral tribunals.

5.6 Breach of Arbitration Agreement
Swiss courts will deny state court jurisdiction and the party that commenced state court proceedings in breach of an arbitration agreement will have to restart the proceedings before an arbitral tribunal (see also 3.3 National Courts’ Approach).

5.7 Third Parties
The Swiss Federal Tribunal has accepted extensions of arbitration agreements to non-signatories in the following situations:

• if an assignment of a claim, an assumption of a debt or a transfer of a contract takes place;
• if a third party intentionally interferes with the performance of a contract in full knowledge of the fact that this contract contains an arbitration agreement; or
• if a contract for the benefit of a third party is concluded; the third party then needs to respect an arbitration agreement as well (unless otherwise stated in said arbitration agreement).

A summary of this legislation can be found in the decision of the Swiss Federal Tribunal No 4A_627/2011, paragraph 3.2 (with further references; see also 3.1 Enforceability).

6. Preliminary and Interim Relief

6.1 Types of Relief
Article 183 PILA expressly authorises arbitral tribunals to order interim measures, unless the parties agreed otherwise in the arbitration agreement.

Interim measures in the sense of the PILA would be measures of a temporary nature which aim to maintain the status quo between the parties while a dispute is pending, safeguard the arbitral process (eg, by preserving evidence), or preserve assets in order to satisfy a subsequent award (eg, security for costs).

Even though it is not expressly excluded according to the terms of the PILA, Swiss arbitral tribunals would be very reluctant to order anti-suit injunctions as there is no legal tradition of applying this measure in Switzerland.

The arbitral tribunal may require a security from the party requesting interim measures in order to secure potential damages from the party against which the order is directed (Article 183.3 PILA).

Increasingly, there are also emergency arbitration proceedings in Switzerland (mostly under the ICC Rules or the Swiss
Rules). In this respect it should be noted that under the Swiss Rules ex parte applications are also admissible before emergency arbitrators.

6.2 Role of Courts
If a party does not voluntarily comply with an interim measures order from an arbitral tribunal, the state courts may assist in the enforcement of the order upon request of the arbitral tribunal (Article 183.2 PILA).

Swiss lex arbitri revision
The final draft clarifies that the state courts may assist in the enforcement of the order also upon the request of a party. It is further clarified that the Swiss state courts will also support arbitral tribunals and parties to arbitration proceedings with place of arbitration outside Switzerland to implement preliminary or securing measures.

6.3 Security for Costs
According to a large majority of legal commentators, arbitral tribunals are in a position to order security for costs in the sense that (typically) the impecunious claimant would have to provide security for the potential procedural costs of the respondent.

The specific requirements are – at the same time – controversially discussed by legal scholars. The majority of legal commentators still require that the financial situation of the party against which the request is directed (typically the claimant) has deteriorated since the conclusion of the arbitration agreement. This means that any party that chooses to contract with an impecunious counterparty (e.g., a shell company or special purpose vehicle) risks that eventually no security for costs will be granted.

7. Procedure

7.1 Governing Rules
Articles 182 to 185 PILA provide a few general rules on arbitral procedure.

For example, it is provided that arbitral tribunals are competent to order specific procedural steps to the extent that the parties did not agree on the applicable procedure. Moreover, and as a matter of mandatory procedural law, Article 182.3 PILA provides that, in any event, arbitral tribunals need to safeguard the parties’ equal treatment as well as their right to be heard in contradictory proceedings.

7.2 Procedural Steps
As long as the parties are treated equally and their right to be heard in contradictory proceedings is safeguarded, Swiss law does not prescribe any particular procedural steps.

At the same time, it should be noted that the right to be heard in contradictory proceedings guarantees the following minimum standard of participation in arbitration proceedings:

- the opportunity to submit arguments on the merits of the case in accordance with the procedural rules;
- participation in oral hearings, if any;
- access to records; and
- the opportunity to comment on the arguments of the other party.

7.3 Powers and Duties of Arbitrators
The arbitral tribunal has the power to order the individual procedural steps in the event that the parties have not reached any agreements regarding the procedure. In this respect, and as already mentioned above, the arbitral tribunal is required to treat the parties equally and grant them the right to be heard in contradictory proceedings (see also 7.1 Governing Rules and 7.2 Procedural Steps).

At the same time, the arbitrators have a duty to conduct a reasonably expedited procedure and issue the necessary orders in good time. They also have a duty to deliberate on the merits of the case and make an award on the basis of the applicable substantive law (which is applied ex officio in Swiss arbitration proceedings pursuant to the principle of iura novit arbiter). An exception applies if the parties agreed that the arbitral tribunal shall decide ex aequo et bono (Article 187.2 PILA).

Finally, the application of the law by the arbitral tribunal must not be surprising. However, a surprise has been acknowledged by the Swiss Federal Tribunal only in very exceptional cases where an arbitral tribunal applied a legal act to which no party had made reference in the arbitral proceedings and the application of which could not have been foreseen by the parties (decision of the Swiss Federal Tribunal No 4A_424/2018 paragraph 5.2.3).

7.4 Legal Representatives
There are no legal requirements for legal representatives in arbitration proceedings in Switzerland, but it is highly recommended to choose a legal representative who is not only educated in Swiss law but also experienced in international arbitration. Candidates should specifically be asked about their experience in international arbitration before being instructed in an arbitration case.

For legal representation of parties before any Swiss state courts (also in challenge proceedings against an arbitral award before the Swiss Federal Tribunal), a Swiss bar exam or an international accreditation as a lawyer in Switzerland is required.
8. Evidence

8.1 Collection and Submission of Evidence
Typically, Swiss arbitrators use the IBA Rules on the Taking of Evidence in International Commercial Arbitration (IBA Rules) as a source of inspiration for the taking of evidence. This means:

- there are usually no US-style discovery proceedings, but requests for the production of specific documents that may be relevant for the outcome of the case are generally considered to be admissible (typically in the format of the so-called 'Redfern Schedule');
- correspondence between clients and legal counsel is usually considered to be legally privileged and is thus excluded from any production orders;
- documentary evidence is to be submitted together with the written submissions;
- written witness statements are fairly common in Swiss international arbitration proceedings;
- in the oral witness hearings, there is typically a brief direct examination (to ‘warm up’ the witness) and then cross-examination on all relevant issues – in many cases, Swiss arbitral tribunals admit redirect examination limited to issues covered in cross-examination and re-cross-examination limited to issues covered in redirect examination; and
- the tribunal often takes the prerogative to ask questions of witnesses at any time during the examinations, but experienced arbitrators will rarely interfere with the examinations of versed counsel, unless there are specific reasons to do so.

8.2 Rules of Evidence
Article 184.1 PILA (merely) provides that it is for the arbitral tribunal to administer the taking of evidence, and Article 184.2 PILA provides that the arbitral tribunal may seek the assistance of the state courts with respect to the taking of evidence.

Against the background of the right to be heard, the tribunal is required to consider evidence which was offered in accordance with the procedural rules.

8.3 Powers of Compulsion
As mentioned above, the arbitral tribunal may seek the assistance of the state courts with respect to the taking of evidence (see 8.2 Rules of Evidence). If relevant evidence is not under the control of either party, there may be no other option than to seek the assistance from a state court, even though it is rarely seen in practice.

However, if relevant evidence is under the control of a party, tribunals may anticipate a so-called ‘adverse inference’ if the evidence is not produced, rather than seeking assistance of the state courts.

Swiss lex arbitri revision
The final draft clarifies that the state courts will also assist arbitral tribunals and parties to arbitration proceedings with a place of arbitration outside Switzerland with the taking of evidence.

9. Confidentiality

9.1 Extent of Confidentiality
Swiss arbitration proceedings are confidential in the sense that they are not open to the public (expressly confirmed by the Swiss Federal Tribunal in connection with the ‘Causa Pechstein’ in decision No 4A_612/2009, paragraph 4.1).

Furthermore, it is widely acknowledged that, based on the arbitrators’ agreement with the parties (receptum arbitri), arbitrators have a duty to keep any information from the arbitral proceedings confidential.

At the same time, legal scholars have controversially discussed whether and to what extent the parties themselves have any confidentiality duties arising out of the arbitration agreement. If the arbitration agreement (including arbitration rules potentially referred to) does not address the issue of confidentiality, it is difficult to find a legal basis for a respective duty between the parties, as the PILA is silent on this issue. Nevertheless, some Swiss commentators suggest that any arbitration agreement should be interpreted to the effect that the mere existence of arbitration proceedings is not confidential, while any materials submitted in the proceedings as well as the award should be considered as confidential.

The Swiss Rules, for example, provide for a general confidentiality provision in Article 44, whereas the ICC Rules do not.

10. The Award

10.1 Legal Requirements
Article 189.1 PILA provides that the arbitral award shall be made in the form and according to the procedure agreed upon by the parties.

Article 189.2 PILA provides that, in the absence of any agreement between the parties, the following requirements apply:

- the award shall be made by majority vote or, in the absence of any majority, by the president of the tribunal;
- the award shall be in written form (the signature of the president is sufficient) and show the date on which it is rendered; and
- the award shall be reasoned (at least with respect to the most relevant arguments of the parties).
10.2 Types of Remedies
As a general rule, the arbitral tribunal may and shall award what is owed pursuant to the applicable substantive law. At the same time, there are some limits which must be considered. First, any arbitral award rendered in Switzerland must remain within the boundaries of Swiss public policy (the so-called 'ordre public'). Any legal consequences which are not in line with Swiss public policy must not be awarded, and such an award would be at risk of being set aside by the Swiss Federal Tribunal. There are indications that punitive damages might be considered as infringement of Swiss public policy by the Swiss Federal Tribunal (see, for example, the decision of the Swiss Federal Tribunal No 122 III 463, paragraph 5.c.cc).

Second, as mentioned above (see 3.2 Arbitrability), only claims 'of financial interest' are arbitrable in Switzerland, so an arbitral tribunal must not award remedies for claims that fall outside the definition of arbitrability.

10.3 Recovering Interest and Legal Costs
The issue of the recovery of legal costs is a matter of procedural law and is thus governed by the arbitration agreement (including reference to any institutional rules). If the arbitration agreement is silent on the allocation of legal costs but both parties request to be compensated for their legal costs, it appears reasonable to accept an implied agreement that legal costs should be allocated. If the parties do not request compensation of legal costs, the issue of the allocation becomes moot, as the tribunal must not award any position that was not requested by either of the parties.

Generally, Swiss tribunals allocate legal costs in proportion to the success of the parties on the merits of the case. Further circumstances (such as the procedural behaviour of the parties) are sometimes considered as well.

The so-called 'American Rule', where each party bears its own costs, is only applied if agreed upon by the parties or if the proportion of the success on the merits is close to 50/50.

11. Review of an Award
11.1 Grounds for Appeal
In Switzerland, an arbitral award may be challenged before the Swiss Federal Tribunal. The available grounds are expressly noted in Article 190.2 PILA and can be summarised as follows:

- incorrect designation and/or composition of the arbitral tribunal;
- inaccurate decision on arbitral jurisdiction;
- the decision either does not cover all of the parties’ requests for relief (infra petita) or goes beyond the requests for relief of the parties (ultra petita);
- infringement of the principles of the right to be heard and/or equal treatment; and
- infringement of Swiss public policy.

The challenge application must be submitted to the Swiss Federal Tribunal within 30 days of the date of receipt of the award, and must specifically demonstrate that at least one of the above reasons for challenge applies to the award at issue. The Swiss Federal Tribunal invites the counterparty and the arbitral tribunal to submit comments (unless a challenge is considered as evidently inadmissible or unfounded by the Swiss Federal Tribunal), and typically decides within a timeframe of four to six months in total.

Moreover, the Swiss Federal Tribunal has admitted requests for the exceptional legal remedy of the so-called ‘revision’ against binding awards (decisions of the Swiss Federal Tribunal Nos 122 III 492 and 134 III 286), which is only available if sufficient reasons are discovered after an award was rendered. Sufficient reasons for a revision include fundamental procedural defects, violation of the European Convention on Human Rights, and other grounds, such as discovery of new material facts or criminal behaviour which affected the award.

A request for revision on the grounds of newly discovered facts must be submitted within 90 days of the discovery of such new facts.

Swiss lex arbitri revision
The final draft expressly provides for limited grounds for a revision in international arbitration, namely, (i) discovery of new material facts, (ii) criminal behaviour which affected the award, (iii) discovery of new circumstances which give rise to doubts as to an arbitrator’s independence or impartiality. Furthermore, the final draft provides for the right of a party to request from the arbitral tribunal the correction of typos, the explanation of unclear or ambiguous considerations and the rendering of an additional award on any claims not dealt with.

11.2 Excluding/Expanding the Scope of Appeal
If no party is domiciled in Switzerland, the parties may exclude any challenge proceedings (Article 192 PILA).

If the parties wish to expand the scope of review of a higher instance, they have the possibility to agree on an appeal mechanism before a second arbitral tribunal, but the Swiss Federal Tribunal will review challenges only as defined in Article 190.2 PILA.
11.3 Standard of Judicial Review
The Swiss Federal Tribunal does not review the merits of the case, unless it is indispensable in order to review issues of arbitral jurisdiction.

12. Enforcement of an Award

12.1 New York Convention
Switzerland has signed and ratified the New York Convention (without reservations; see also 3.1 Enforceability).

12.2 Enforcement Procedure
Enforcement of an arbitral award does not require a separate recognition procedure in Switzerland. Rather, the competent court will examine as a preliminary question within the specific enforcement procedure whether or not the requirements of the New York Convention are fulfilled.

The applicable state court jurisdiction and the details of the enforcement procedure are provided for in Articles 335 et seq CCP and the Swiss Debt Enforcement and Insolvency Act.

12.3 Approach of the Courts
Swiss courts are rightly considered to be arbitration-friendly and there are rarely any public policy concerns that would impede enforcement of an arbitral award.

13. Miscellaneous

13.1 class-action or Group Arbitration
Collective arbitration procedures do not exist and requests for representative relief cannot be submitted to arbitration in Switzerland.

Subject to a very limited number of exceptions, claimants are not entitled to submit any claims but their own to arbitration. Likewise, Swiss awards strictly entitle and bind the parties to the arbitration only.

13.2 Ethical Codes
All qualified Swiss lawyers who are registered to represent parties in state courts must comply with Switzerland's professional rules, including its ethical provisions. Their entire contentious and non-contentious legal work (whether in or out of court) must comply with these professional rules. This includes, as a general rule, any work as arbitrator or counsel in arbitration proceedings, including cases with place of arbitration outside Switzerland.

International soft law (such as the IBA International Principles on Conduct for the Legal Profession or the IBA Guidelines on Party Representation) are often viewed with scepticism (with the exception of the IBA Guidelines on Conflicts of Interest in International Arbitration which are also used by the Swiss Federal Tribunal as guidelines, as mentioned above; see 4.5 Arbitrator Requirements).

13.3 Third-party Funding
Third-party funding is not specifically addressed by Swiss statutory laws or Swiss arbitration law. However, the possibility of third-party funding and its limitations have been confirmed and analysed by the Swiss Federal Tribunal numerous times (decisions of the Swiss Federal Tribunal Nos 131 I 223 and 2C_814/2014).

Third-party funding must not prevent Swiss lawyers from acting in line with the professional rules. As in all other cases, Swiss lawyers must act independently, keep client-related information confidential, and avoid conflicts of interest. In addition, Swiss lawyers must comply with the following limitations for success fee arrangements, which have been recently highlighted by the Swiss Federal Tribunal (decision of the Swiss Federal Tribunal No 4A_125/2018):

• the fees which are not performance-related must cover the lawyer’s costs and include a reasonable profit margin;
• the performance-related fees must not be higher than the fees which are not performance-related;
• the success fee arrangement must be made either at the beginning or after the completion of the case. During the proceedings, lawyers must not enter into success fee arrangements with their clients.

13.4 Consolidation
Consolidation is not specifically addressed by Swiss arbitration law. Consolidation of compatible proceedings is possible, and usually governed by institutional rules (eg, by Article 4 of the Swiss Rules).

13.5 Third Parties
Arbitration agreements can extend to non-signatories only in the limited number of situations described above (see 5.7 Third Parties).

As a general rule, awards cannot be enforced against any party but the award debtor. Piercing of the corporate veil at the enforcement level is only possible in very exceptional cases that must typically include an abuse of corporate structures.