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IBA ARBITRATION COMMITTEE

Arbitration Guide

SWITZERLAND

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

Switzerland is one of the major venues for international arbitration. Many factors account for this reputation, in particular neutrality, a secure and predictable legal framework, access to qualified arbitrators and counsel (Swiss and foreign) as well as a developed infrastructure. Switzerland has a modern and liberal international arbitration law in Chapter 12 of the Swiss Private International Law Act (SPILA), in force since 1 January 1989, which grants the parties to arbitration wide autonomy. Chapter 12 of the SPILA provides a streamlined set of essential provisions which assure proper constitution and functioning of the arbitral tribunal and give the parties (and the arbitrators) all the necessary flexibility to conduct the arbitral proceedings in accordance with their own fair and reasonable expectations. Users of international arbitration services in Switzerland generally do not perceive disadvantages since the alternative in most cases would be litigation in the home country of their adversary.

Swiss parties rarely resort to domestic arbitration for their domestic disputes. Litigation remains the preferred dispute resolution. Domestic arbitration is governed by the Swiss Code of Civil Procedure (SCCP) (Article 353 SCCP).

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

It is difficult to assess the respective importance of institutional and ad hoc arbitration, given that there is no statistical information available in relation to the latter. In any case, international arbitration by far outnumbers domestic arbitration in Switzerland. The most common institutional rules are the Rules of Arbitration of the International Chamber of Commerce (ICC). Swiss seats (mainly Geneva and Zurich) are the most frequently chosen places for ICC arbitrations, ahead of Paris and London. The Swiss Rules of International Arbitration of the Swiss Arbitration Centre (Swiss Rules) and the Court of Arbitration for Sport (CAS) in Lausanne are also widely used.

(iii) What types of disputes are typically arbitrated?

Article 177 SPILA offers a wide definition of arbitrable disputes that covers all disputes with an economic interest. A wide range of commercial disputes are thus arbitrated in Switzerland. Disputes typically referred to arbitration include those concerning construction projects, sales contracts, commodity trading, energy supply, and license agreements.

(iv) How long do arbitral proceedings usually last in your country?

Many proceedings last between 18 and 24 months. However, the length of arbitral proceedings varies depending on the complexity of the particular case and whether the arbitration is conducted under institutional or ad hoc rules.

With respect to post-arbitration court proceedings, Switzerland has an edge over many other arbitration venues. There is only one remedy available against international arbitration awards: an application directly to the Swiss Federal Supreme Court. Proceedings before the Supreme Court last 6 to 8 months on the average.

Under the Swiss Rules of International Arbitration of the Swiss Arbitration Centre (Swiss Rules) proceedings involving amounts below CHF 1 million will be expedited. The parties may agree to the expedited procedure also for cases where the amount in dispute exceeds CHF 1 million (Article 42 Swiss Rules). In such cases, an award must be rendered (subject to limited exceptions) within six months from the date when the file is transmitted to the arbitral tribunal (Article 42(2)(e) Swiss Rules).

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

There are no restrictions.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

In Switzerland, different sets of rules apply to domestic and international arbitration. Chapter 12 of the SPILA applies to international arbitral proceedings seated in Switzerland where, at the time of the conclusion of the arbitration agreement, at least one of the parties did not have its domicile or habitual residence in the country. Although the SPILA is not based on the UNCITRAL Model Law, there are no major differences between them.

Domestic arbitration is governed by Part 3 of the SCCP (Article 353 ss), in force since 1 January 2011, which harmonized the previously applicable 26 different cantonal codes on civil procedure and replaced the Swiss Cantonal Concordat on Arbitration of 1969. Only minor amendments to these dispositions are provided for by the revision of the SCCP which will enter into force on 1 January 2025.

Part 3 of the SCCP applies to arbitrations having their seat in Switzerland where, at the time of the conclusion of the arbitration agreement, all parties had their domicile or habitual residence in Switzerland. The parties in a domestic arbitration may choose to apply Chapter 12 of the SPILA but they must express this choice in writing or in another form that provides text-based proof of such agreement (Articles 353(2) and 358 SCCP).

Moreover, if the parties so agree, arbitral proceedings – whether domestic or international – can be governed by any set of rules issued by private arbitration institutions, such as the ICC Rules or the Swiss Rules.

(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?

There are no major differences between Chapter 12 of the SPILA and Part 3 of the SCCP, which both provide for wide party autonomy. The major differences are the remedies available to challenge a domestic or an international arbitral award. In both cases, Swiss law provides for very limited grounds upon which arbitral awards may be challenged. That being said, domestic awards can be appealed on two additional grounds (Article 393 SCCP).

(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

Switzerland is a party to the New York Convention, which entered into force in Switzerland on 30 August 1965. Switzerland is also a party to the Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927, although their relevance have been superseded by Article VII(2) of the New York Convention. Finally, Switzerland is a party to the Washington Convention for the Settlement of Investment Disputes Between States and Nationals of Other States of 1965.

(iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

International arbitration: Article 187(1) SPILA is based on the principle of party autonomy and provides that the arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties. If the parties have not agreed upon the applicable law, the arbitral tribunal shall decide according to the rules of law with which the case has the closest connection. The phrase 'rules of law' should be understood broadly to include transnational rules of law, general principles of law, public international law, *lex mercatoria*, UNIDROIT principles, etc. Under Article 187(2) SPILA, the parties may also authorize the arbitral tribunal to decide the dispute *ex aequo et bono*.

Domestic arbitration: According to Article 381 SCCP, parties are free to determine the applicable rules of law. In the absence of a choice of law, the arbitral tribunal will apply the law 'which an ordinary court would apply' (Article 381(2) SCCP).

III. Arbitration Agreements

(i) Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?

In international arbitration proceedings, Article 178(1) SPILA provides that the arbitration agreement must be in writing. Article 178(2) SPILA further provides that the arbitration agreement is valid if it complies with the requirements of the law chosen by the parties or the law governing the object of the dispute and, in particular, the law applicable to the principal contract, or with Swiss law. Under Articles 357 and 358 SCCP, the same basic principles are applicable to domestic arbitration.

Neither Chapter 12 of the SPILA (Article 178) nor Part 3 of the SCCP (Article 358) explicitly deals with the content of a valid arbitration agreement under Swiss law. However, the minimum requirements of a valid arbitration agreement under Swiss law correspond to those specified in Article II(1) of the New York Convention (in force and binding on Switzerland since 1965).

(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?

An arbitration agreement may be deemed completely or partially invalid under Swiss law for various reasons. The parties are free to agree on whatever they wish in their arbitration agreement, as long as it does not violate mandatory law, public policy, morality, or the right of legal personality (Article 19 of the Swiss Code of Obligations (SCO), applied by analogy). More specifically, an arbitration agreement must abide by the mandatory provisions of Chapter 12 of the SPILA, such as Article 177 (subject-matter arbitrability), Article 178 (form of the arbitration agreement), Article 180(1) (c) (independence of arbitrators) and Article 182(3) (equal treatment requirement and right to be heard in an adversarial procedure).

The enforcement of awards is governed by the New York Convention. Enforcement can be refused in the circumstances described in Article V of the Convention.

(iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?

Multi-tier arbitral clauses are relatively common. The Swiss Federal Supreme Court has ruled that their enforceability depends upon the specific drafting language of the multi-tier arbitral clause in question (eg, whether or not it is unambiguous and contains a time-limit) and general principles of contract interpretation.

If an arbitration is initiated in disregard of a multi-tier clause, the arbitral tribunal has to stay the proceedings and set the parties a time limit to comply with the pre-arbitral step.

(iv) What are the requirements for a valid multi-party arbitration agreement?

Chapter 12 of the SPILA does not specifically address multi-party arbitration agreements. On the other hand, Article 11 Swiss Rules, provides for a specific regime regarding the constitution of the arbitral tribunal in multi-party proceedings.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

In accordance with the principle of wide party autonomy, an arbitration agreement which provides for a unilateral right of one of the parties to arbitrate is enforceable.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

Swiss law is based on the well-established principle of privity of contract by which the arbitration clause binds only the parties that have originally agreed to it. Certain exceptions to this rule have nevertheless been accepted in Swiss case law. In particular, the Swiss Federal Supreme Court has held that the extension of an arbitration agreement to a non-signatory party is admissible if that party participated in the negotiation or performance of the contract in a manner demonstrating that it was willing to be bound by the arbitration agreement. The Swiss Federal Supreme Court has also held that the mere existence of a group of companies does not generally result in the obligation of the parties of this group to arbitrate.

(vii) How do the courts in the jurisdiction determine the law governing the arbitration agreement?

According to Article 178(2) SPILA, the arbitration agreement is valid if it complies with Swiss law, the law governing the contract or the law chosen to govern the arbitration agreement, if any.

(viii) Do courts in your jurisdiction distinguish between the seat (or legal place) of the arbitration and the venue of meetings/hearings?

Yes.

(ix) Are blockchain- and NFT-related disputes arbitrable in your jurisdiction?

Yes. Article 177(1) SPILA provides that any dispute involving an economic interest may be submitted to arbitration.

(x) Are there circumstances in which courts find that a valid arbitration agreement has become inoperable?

That will require a case-by-case analysis. One example are clauses referring to arbitration administered by institutions that disappeared when neither a successor institution nor a presumed intent to arbitrate ad hoc or under different rules exists.

IV. Arbitrability and Jurisdiction

(i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?

In relation to international arbitral proceedings, Article 177(1) SPILA provides that any dispute involving an economic interest may be submitted to arbitration. The arbitrability of domestic disputes is regulated by Article 354 SCCP which provides that any cause of action of which the parties are free to dispose may be the subject of arbitration. Excluded are primarily the following matters:

- Legal status matters in family law, such as matrimony, paternity suits, adoption, paternalism, divorce, etc.;
- Insolvency law matters, such as the commencement of bankruptcy proceedings, arrest *in personam* or *in rem*, dismissal of objection in prosecution proceedings, etc.; and
- Issuance and constitutive registration of patents, designs, and trademarks.

In principle, the arbitral tribunal decides whether the dispute submitted to it is capable of being submitted to arbitration. The question of arbitrability is a requirement for the validity of the arbitration agreement and is thus considered a condition for the jurisdiction of the arbitral tribunal. However, the subject of arbitrability may also become relevant at a later stage of the proceedings. For example, a Swiss state court might be seized with an action to set aside the award where the arbitral tribunal has wrongly accepted or denied jurisdiction, due to lack of arbitrability (Article 190(2)(b) SPILA; Article 393(b) SCCP).

(ii) What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?

If a party initiates court proceedings in breach of an arbitration agreement, the state court will decide upon its jurisdiction.

A party that proceeds on the merits will lose its right to rely on an arbitration agreement.

Under Article 186(1)bis SPILA, the arbitral tribunal shall decide on its own jurisdiction irrespective of whether an action having the same subject-matter is already pending between the same parties before a state court unless significant grounds exist that require a stay of the arbitration proceedings. Under Article 186(2) SPILA, jurisdictional objections should be raised prior to any statement on the merits.

(iii) Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?

Under Article 186(1) SPILA, the arbitral tribunal shall rule on its own jurisdiction (*competence-competence*). As a rule, the arbitral tribunal will have to issue an interim award on its jurisdiction, if it is challenged, unless the facts relevant for jurisdiction are intertwined with those that are decisive for the merits (Article 186(3) SPILA).

In both international and domestic arbitration proceedings, the arbitral tribunal's decision on its jurisdiction can generally be appealed before the Swiss Federal Supreme Court. An appeal against an interim award on the arbitral tribunal's jurisdiction should be filed immediately (without awaiting the final award) (Articles 190(3) SPILA and 392(b) SCCP).

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

The parties enjoy freedom in the selection of arbitrators. Article 179 SPILA accordingly provides that the arbitrators shall be appointed, removed, or replaced pursuant to the agreement of the parties. In the absence of such agreement, the judge at the place of arbitration shall apply (by analogy) the provisions of the SCCP on appointment, removal, or replacement of arbitrators (Article 179(2) SPILA read in conjunction with Articles 360-371 SCCP). If the parties fail to agree on the person to be appointed as a sole or presiding arbitrator, the competent court at the place of arbitration will appoint the arbitrator(s) upon a party's request.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

Chapter 12 of the SPILA is silent on the specific requirements for disclosure of conflicts in the case of international arbitration proceedings. Article 180(1) SPILA provides that an arbitrator can be challenged if circumstances exist that give rise to justifiable doubts as to his or her independence or impartiality. Under Article 180(2) SPILA, a party may challenge an arbitrator whom it nominated or in whose appointment it participated only based on information discovered after the appointment. Written notice of the challenge must be given within 30 days of the date on which the challenging party becomes aware of the grounds for the challenge or could have become aware thereof had it exercised due diligence. In the event of dispute and if the parties have not agreed upon the procedures for challenge, the judge at the place of arbitration shall make the final decision (Article 180a SPILA).

Disclosure in domestic arbitration is governed by Article 363 SCCP.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

Anyone may serve as an arbitrator in Switzerland. Article 180(1)(c) SPILA and Article 367(1)(c) SCCP require only that an arbitrator in an arbitration be independent and impartial. There are no specific restrictions regarding the qualification or nationality of the arbitrators. Court judges may act as arbitrators as well. However, cantonal law may require a judge to give notice of such appointment or ask for permission to accept such appointment.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

In a decision from 2008, the Swiss Federal Supreme Court has stated that the IBA Guidelines on Conflicts of Interest in International Arbitration may not have the same value as statutory law, but they nevertheless constitute a valuable tool that is likely to influence the practice of both institutions and state courts in Switzerland.

VI. Interim Measures and Emergency Arbitration

- (i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?**

The arbitral tribunal's competence to order interim measures is recognized in Article 183(1) SPILA and Article 374(1) SCCP. Unless otherwise agreed upon by the parties, the arbitral tribunal may, at the request of either party, order interim measures and has wide discretion as to the content of interim measures. For example, if applicable, Article 29(1) Swiss Rules provides in general terms that the arbitral tribunal may at the request of either party order any interim measures it deems necessary or appropriate. If the Swiss Rules are applicable, its Article 29(2) provides that interim measures may be established in the form of an interim award.

- (ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?**

The prevailing view in Switzerland is that, unless otherwise agreed upon by the parties, the jurisdiction of the arbitral tribunal in an international arbitration to order interim measures provided for in Article 183(1) SPILA is not exclusive but is concurrent with that of state courts. Article 29(5) Swiss Rules also embodies this principle. Domestic arbitrations are based on the same principle and Article 374(1) SCCP gives effect to this in explicit terms. In other words, in Switzerland, the party requesting interim relief may – even after the arbitral tribunal is constituted – freely choose whether to apply for such measures before state courts or the arbitral tribunal.

- (iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?**

Article 184(2) SPILA and Article 375(2) SCCP both provide that if judicial assistance is necessary for the taking of evidence, the arbitral tribunal may apply for such assistance to the state court at the place of arbitration. The same provisions further state that the arbitral tribunal's consent is a condition of admissibility in any such proceedings before the state court.

- (iv) Are decisions by emergency arbitrators enforceable in your country?**

This has to be assessed on a case-by-case basis. The decision would have to qualify as an award under the SPILA (as opposed to an interim measure) and be compliant with the annulment criteria in Article 190 SPILA. Applicable arbitration rules on the nature of the emergency arbitrator's decision will also be relevant (for instance Article 43 Swiss Rules).

- (v) What is the approach in your country to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings?**

As a general rule, Swiss courts do not use anti-suit injunctions. Arbitral tribunals can, and sometimes do, enjoin a party from proceeding with parallel court proceedings.

- (vi) Do courts provide assistance in aid of foreign-seated arbitrations, including for disclosure of documents?**

Yes, as provided by Article 185a SPILA.

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

Article 184(1) SPILA provides that the arbitral tribunal itself conducts the taking of evidence, within the overall scope of the arbitral procedure agreed upon by the parties. The arbitral tribunal is accordingly competent to determine the applicable rules for the taking of evidence. Neither the SPILA nor the SCCP provide specific rules on disclosure and discovery. In any case, the evidentiary proceedings are subject to the overriding principles of the right to equal treatment and the right to be heard.

Arbitral tribunals seated in Switzerland will often rely on Articles 3(3) and 9(2) of the IBA Rules on the Taking of Evidence in International Arbitration.

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

Arbitral tribunals seated in Switzerland will often be guided by Articles 3(3) and 9(2) of the IBA Rules on the Taking of Evidence in International Arbitration.

(iii) Are there special rules for handling electronically stored information?

In dealing with electronically stored information, arbitral tribunals seated in Switzerland will often be guided by Article 3(3) and 9(2) of the IBA Rules on the Taking of Evidence in International Arbitration.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

Neither Chapter 12 of the SPILA nor Part 3 of the SCCP address the confidentiality of the arbitration. However, it is generally accepted that arbitrators assume a duty of confidentiality with the acceptance of their mandate. Whether the parties themselves are also under a duty of confidentiality depends on the existence of a corresponding confidentiality agreement between them. A confidentiality agreement is, for example, provided by the Swiss Rules. According to Article 44 Swiss Rules, the parties undertake as a general principle to keep confidential all awards as well as all materials submitted by another party in the framework of the arbitral proceedings and not otherwise in the public domain.

As a general rule, exceptions to this principle of confidentiality apply if disclosure is required by a legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a judicial authority.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

Trade secrets and confidential information have traditionally enjoyed protection in Switzerland, principally by virtue of provisions of criminal law and the law against unfair competition. Nowadays, this type of information is also protected by Article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which is directly applicable in Switzerland. In those cases where the parties have agreed upon the application of the IBA Rules on the Taking of Evidence in International Arbitration, the arbitral tribunal may, on the basis of Article 9(2)(e), exclude from the evidence or refuse to order production of any document, statement, oral testimony, or inspection that it determines to be commercially or technically confidential.

(iii) Are there any provisions in your arbitration law as to rules of privilege?

The arbitral tribunal must first of all have due regard to possible arrangements made by the parties themselves (in application of Article 182(1) SPILA or Article 373(1) SCCP). If the parties have not determined questions related to privilege, the arbitral tribunal shall determine it to the extent necessary (Article 182(2) SPILA; Article 373(2) SCCP). In such circumstances, Articles 9(2)(b), (e), and (g) of the IBA Rules on the Taking of Evidence in International Arbitration will often provide the arbitral tribunal with helpful guidance.

IX. Evidence and Hearings

(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?

The IBA Rules on the Taking of Evidence in International Arbitration are often used as guidance in arbitrations seated in Switzerland.

(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?

Under Article 182(3) SPILA and Article 373(4) SCCP, irrespective of the procedure chosen, the arbitral tribunal shall accord equal treatment to the parties and their right to be heard in adversarial proceedings.

(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?

The arbitral tribunal is free to determine the manner in which witnesses are examined subject only to the arbitral tribunal's duty to treat the parties equally. It is common practice for arbitral tribunals seated in Switzerland to seek guidance from Article 4 of the IBA Rules on the Taking of Evidence in International Arbitration and thus to require a written witness statement for each parties' fact witnesses. Oral examinations are the rule (examination in chief; cross-examination). The arbitral tribunal may ask questions to a fact witness or expert witness at any time of the proceedings (as is also the case under Article 8(4)(g) of the IBA Rules on the Taking of Evidence in International Arbitration).

(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?

It is a matter for the applicable arbitral procedure (Article 182 SPILA; Article 373 SCCP) to determine who, when, where, in what form, and by whom a witness may be heard and examined. Under the SPILA, the SCCP and the Swiss Rules (Article 27(3)), any person may be a witness or expert witness.

There are no mandatory rules on oath or affirmation, but the arbitral tribunal may seek guidance from Article 8(4) of the IBA Rules on the Taking of Evidence in International Arbitration. In any case, providing false testimony to an arbitral tribunal seated in Switzerland may entail criminal sanctions in the same way as when made before state courts in accordance with Articles 306 and 309 of the Swiss Penal Code.

(v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative, director or employee) and the testimony of unrelated witnesses?

In principle, there is no distinction between the testimony of a witness specially connected with one of the parties and the testimony of an unrelated witness (see also Article 27(3) Swiss Rules). In essence, the arbitral tribunal is free to weigh the evidence which has been provided by the parties. Witnesses with no interest in the outcome of the proceedings might carry more weight.

(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?

According to the case law of the Swiss Federal Supreme Court, tribunal-appointed experts must be independent and impartial. Party-appointed experts are not expected to be impartial.

(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?

While it is increasingly common for each of the parties to appoint their own experts, arbitral tribunals seated in Switzerland retain the discretion to appoint their own experts. It is for the arbitral tribunal to assess the probative value of both forms of evidence. There is no requirement that experts be selected from a particular list.

(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?

Arbitral tribunals seated in Switzerland occasionally use witness conferencing.

(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?

The use of arbitral secretaries is very common, especially in complex cases. Article 365 SCCP provides that the arbitral tribunal in a domestic arbitration may appoint a secretary to the tribunal. The same principle applies (though not expressed explicitly) to international arbitrations governed by Chapter 12 of the SPILA. The main rule concerning the use of an arbitral secretary is the requirement that he or she is to be independent and impartial in the same way as the arbitrators themselves (see Article 365(2) SCCP and Article 16(3) Swiss Rules).

(x) Are there any ethical codes or other professional standards applicable to counsel and arbitrators conducting proceedings in your jurisdiction?

No specific rules other than those applying to the bar rules and laws governing the legal profession that apply anyway.

(xi) Have arbitral institutions in your jurisdiction implemented rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons?

No, although there are known instances of unsuccessful attempts to remove opposing counsel (Decisions of the Swiss Federal Supreme Court 4A_287/2019 and 4A_428/2011).

(xii) Has your jurisdiction adopted any rules with regard to remote hearings and have there been any court decisions on same?

Remote hearings are allowed and common as illustrated by Article 27(2) Swiss Rules: 'Any hearings may be held in person or remotely by videoconference or other appropriate means, as decided by the arbitral tribunal after consulting with the parties.'

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

Article 189(1) SPILA provides that the arbitral award shall be rendered according to the procedure and in the form agreed upon by the parties. In the absence of such agreement, Article 189(2) SPILA provides that the award shall be rendered by a majority or, in the absence of such majority, by the chairman alone. The award must be in writing, set forth the reasons on which it is based, and be dated and signed. In a domestic arbitration, the content of the award is provided by Article 384 SCCP.

Whether in international or domestic arbitrations, an arbitral tribunal may grant damages, relief for specific performance, as well as interim and declaratory reliefs.

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

The questions of damages and interest are generally governed by substantive law (Article 187 SPILA; Article 35(1) Swiss Rules).

(iii) Are interim or partial awards enforceable?

Article 190(3) SPILA and Article 392(b) SCCP provide that interim or partial awards are enforceable and may be challenged only if the arbitral tribunal was irregularly constituted or if the arbitral tribunal wrongly decided on its own jurisdiction.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

Neither Chapter 12 of the SPILA nor Part 3 of the SCCP contains provisions on the admissibility of dissenting opinions. The Swiss Federal Supreme Court has ruled that, where the parties have not agreed to the contrary, the majority of the arbitral tribunal may decide upon whether and how to communicate a dissenting opinion to the parties (Swiss Federal Supreme Court decision 4P.23/1991, consideration 2b, confirmed in 4P.196/2003, consideration 1.2). A dissenting opinion does not form part of the award itself, but it may be annexed to the award or delivered to the parties separately.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

Unless the parties have agreed otherwise, the arbitral tribunal may render an award by consent if so requested (Article 385 SCCP). Under Article 36 Swiss Rules, if so requested by all parties to a settlement agreement, the arbitral tribunal shall issue a consent award on agreed terms.

An arbitral tribunal may also issue a simple procedural order for the termination of the proceedings. The form, content, and notification of which are governed by the applicable arbitral procedure (Article 182 SPILA; Article 373 SCCP).

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

Under Article 189a(1) SPILA, unless the parties have agreed otherwise, either party may, within 30 days of the notification of the award, request the arbitral tribunal to correct any clerical or computational errors in the award, to interpret certain parts of the award, or to issue a supplement to the award on claims which were. The arbitral tribunal may itself make corrections, explanations, or additions within the same deadline. In a domestic arbitration, a similar rule applies.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

Both Chapter 12 of the SPILA and Part 3 of the SCCP are silent on this matter. It is thus primarily for the parties to determine issues related to the cost of an arbitration. In the absence of an agreement, the arbitral tribunal has broad discretion. The rule that unsuccessful parties bear the costs is widely applied (see Article 40 Swiss Rules).

(ii) What are the elements of costs that are typically awarded?

Article 38 Swiss Rules is a good illustration of recoverable costs. These costs include fees of the arbitral tribunal, travel and other expenses incurred by the arbitrators, costs of expert advice and of other assistance, costs of witnesses and experts, legal and other costs, and the costs for the administration of the arbitration payable to the chambers.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

In administrated arbitration, the rules of the institution will provide guidance. In ad hoc arbitration, the arbitral tribunal will determine the costs of arbitration in its award. However, arbitrators have no power to order the parties to remunerate the members of the arbitral tribunal. Consequently, arbitral tribunals must ensure that their fees are covered by appropriate advances prior to issuing the award.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

The arbitral tribunal has discretion, unless the parties' agreement imposes apportioning rules, be it directly or by reference to rules of an arbitration institution.

(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?

The award on costs rendered by an international arbitral tribunal may be challenged on the grounds listed in Article 190(2) SPILA. The main grounds would be alleged lack of jurisdiction to decide on costs (Article 190(2)(b) SPILA) or an alleged decision beyond the claims submitted, for example, if an ad hoc arbitral tribunal awards costs without any corresponding request by the parties (Article 190(2)(c) SPILA).

The award on costs rendered by a domestic arbitral tribunal may be challenged on the grounds listed in Article 393 SCCP. In contrast to an international arbitral award, a domestic arbitral award may be challenged on the grounds that the fees and expenses of the tribunal are manifestly excessive (Article 393(f) SCCP).

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

International arbitral awards, whether final, partial, or interim, may be set aside pursuant to Article 190 SPILA. The limited grounds upon which an award may be set aside are contained in Article 190(2) SPILA. Grounds for a challenge are an irregular constitution of the arbitral tribunal, a wrong decision on jurisdiction, where the arbitral tribunal has ruled beyond the claims submitted to it, or failed to decide on the claims, where there is a violation of the right to be heard or of the principle of equal treatment of the parties, or where the award is incompatible with public policy. Interim awards can be challenged only on the grounds of the irregular constitution of the arbitral tribunal and a wrong decision on jurisdiction (Articles 190(2)(a) and (b) and 190(3) SPILA).

In domestic arbitration, awards may also be contested on the grounds that the result of the award is arbitrary because it is based on findings that are obviously contrary to the facts on record or because it constitutes an obvious violation of law or equity (Article 393(e) SCCP), or that the costs and compensation fixed by the arbitral tribunal are obviously excessive (Article 393(f) SCCP). These grounds are not available for challenges against awards rendered in international arbitration proceedings seated in Switzerland.

In accordance with Article 100(1) of the Swiss Federal Tribunal Act, a full application to challenge the award must be filed within 30 days from the notification of the award. The time limit cannot be extended. The Swiss Federal Supreme Court will normally render its decision on annulment within 6 to 8 months. A second exchange of submissions or oral argument is allowed only exceptionally.

An award rendered in international or domestic arbitration proceedings is enforceable as of the date of notification to the parties (Article 190(1) SPILA; Article 387 SCCP). As a rule, filing a motion to set aside the award has no effect on its finality or enforceability (Article 103(1) Swiss Federal Tribunal Act). However, the Swiss Federal Supreme Court may, and in exceptional cases indeed does, grant a stay the enforcement.

(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?

Pursuant to Article 192(1) SPILA, if neither party has a domicile, a place of habitual residence, or a place of business in Switzerland, they may, by an express declaration in the arbitration agreement or in a subsequent written agreement, waive (in whole or in part) the remedies against the award of the arbitral tribunal.

(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?

Switzerland provides only one level of challenge in arbitration matters, namely a request to set aside to be filed with the Swiss Federal Supreme Court (Article 191 SPILA; Article 389 SCCP). This remedy is not an appeal. The Court does not have full power of review regarding the factual findings of the arbitral tribunal.

(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

If the Swiss Federal Supreme Court sets aside an international arbitral award, it may only annul the challenged award and remand the case to the same arbitral tribunal for the rendering of a new award (so-called 'cassatory' nature of the action for annulment; Article 77 Swiss Federal Tribunal Act). The Swiss Federal Supreme Court does not issue its own decision on the merits.

(v) Is there a specialist arbitration court in your jurisdiction?

There are private bodies administering arbitrations such as, CAS for sport disputes, the Swiss Arbitration Centre and WIPO. There is no court dedicated exclusively to arbitration, but most cases are handled by the Swiss Federal Supreme Court's civil chamber.

(vi) To what extent do courts in your jurisdiction allow arbitrators to amend and/or replace wrongly invoked law or the law not invoked by the parties (iura novit arbiter)? Could this be a basis to set aside the award?

Arbitrators not only have the right but the duty to apply the law (iura novit curia). The limit for arbitrators is due process. They must not take the parties by surprise with an utterly unexpected legal argument that neither party had raised or could anticipate. Awards can be challenged on this ground (violation of the right to be heard, see Article 190(2)(d) SPILA and Article 393(d) SCCP).

XIII. Arbitrator Liability

(i) Does the arbitration law in your jurisdiction expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate? If so, are there exceptions to this immunity?

The SPILA and SCCP do not address liability. The Swiss Rules do in Article 45. Under Swiss law, liability for gross negligence or unlawful intent cannot be excluded (Article 100(1) SCO).

(ii) Does this immunity, if any, extend to criminal liability?

See above.

XIV. Recognition and Enforcement of Awards

- (i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

An international arbitral award rendered under Chapter 12 of the SPILA has the same effect as a final decision by a state court which is automatically enforceable. Similarly, a domestic arbitral award rendered under Part 3 of the SCCP is automatically enforceable in the same way as a judicial decision by a Swiss state court (Article 387 SCCP). Hence, a final and binding award rendered by an international arbitral tribunal seated in Switzerland can also be automatically enforced throughout Switzerland, in application (by analogy) of the rules contained in Articles 336-346 SCCP.

In Switzerland, different rules apply to the enforcement of monetary and non-monetary claims. The former is governed by the Swiss Debt Enforcement and Bankruptcy Act of 1889 (DEBA; see Article 335(2) SCCP) while the latter is governed by Articles 335-346 SCCP. The recognition and enforcement of foreign arbitral awards is governed by the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (Article 194 SPILA). The grounds for opposing the enforcement of foreign arbitral awards are those listed in Article V of the New York Convention. Foreign monetary arbitral awards are enforced in accordance with the provisions of the DEBA. The enforcement of foreign arbitral awards awarding non-monetary relief are governed by the SCCP.

- (ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?**

According to Article 193(2) SPILA, a party may request the competent state court to certify the enforceability of the arbitral award. Such a certificate is not binding on a Swiss state court but may serve as *prima facie* evidence in enforcement proceedings that the arbitral award has *res judicata* effect and is enforceable under the law of the seat of the arbitral tribunal.

- (iii) Are conservatory measures available pending enforcement of the award?**

Pending enforcement of an arbitral award rendered in Switzerland, the Swiss state court where enforcement is sought may order provisional and conservatory measures, if necessary also *ex parte*, for both monetary and non-monetary claims (see Article 271(1)(6) DEBA and Article 340 SCCP).

- (iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?**

Switzerland is known to be arbitration-friendly.

- (v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?**

The duration of enforcement proceedings depends on a number of factors, including the complexity of the matter but generally take about six months.

XV. Sovereign Immunity

(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?

In Switzerland, there is very little statutory legislation on state immunity. The matter is mostly governed by case law, in particular that of the Swiss Federal Supreme Court. Under Swiss law, states enjoy immunity in relation to their public acts (*acta jure imperii*), while there is no guarantee of immunity for their private acts (*acta jure gestionis*) such as personal injury, property damage (torts), or all kinds of commercial activities.

(ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?

Under Swiss law, where the state acts in a commercial capacity (*acta jure gestionis*), state immunity may be lifted, provided that the matter has a 'sufficient connection' with Switzerland (in German: '*Binnenbeziehung*'; in French '*rattachement suffisant*'). Thus, even if the dispute arises from a commercial act of the foreign state, it is necessary to demonstrate that circumstances exist which connect the legal relationship in question so closely to Switzerland that it is justified to summon the foreign state to appear before Swiss state courts. A connection is deemed sufficient where the legal obligation arose or was, or had to be, performed in Switzerland.

(iii) Are there any requirements for arbitrations involving sovereign entities?

No.

XVI. Investment Treaty Arbitration

(i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?

Switzerland has been a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States since 1968. It has also been a party to the Energy Charter Treaty since 1998.

(ii) Has your country entered into bilateral investment treaties with other countries?

Switzerland has one of the largest bilateral investment protection treaty (BIT) networks in the world. It has signed 128 BITs with other countries of which 110 are currently in force.

(iii) Have there been any recent court decisions in your country in relation to intra-European investor-state arbitration?

In two annulment proceedings against investor-state arbitral awards, an argument based on the *Achmea* decision of the European Court of Justice dated 6 March 2018 was raised. In both cases however, the Swiss Federal Supreme Court dismissed the arguments on procedural grounds so that it did not address the impact of the *Achmea* decision.

In February 2018, a challenge was brought to the Swiss Federal Supreme Court against the *Natland et al. v. Czech Republic* partial award, dealing *inter alia* with issues of jurisdiction. Since the *Achmea* decision was issued after its setting aside application, the Czech Republic invoked the *Achmea* decision for the first time in its reply. The argument was dismissed on procedural grounds (arguments not duly raised in the setting aside application are inadmissible at a later stage of the proceedings). Hence, in its decision 4A_80/2018 dated 7 February 2020, the Swiss Federal Supreme Court did not further delve into the *Achmea* decision.

Moreover, in its decision 4A_187/2020 of 23 February 2021, the Swiss Federal Supreme Court rejected Spain's application to set aside a final award rendered under the Energy Charter Treaty (ECT). More particularly, it dismissed Spain's arguments that the arbitral tribunal had violated its right to be heard and procedural public policy when it refused to revisit a 2014 preliminary award on jurisdiction after the *Achmea* decision. However, as Spain did not seek the annulment of the final award on the ground of lack of jurisdiction based on *Achmea*, the Swiss Federal Supreme Court did not address the impact of *Achmea* on ECT disputes.

XVII. Resources

(i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?

Practitioners wishing to learn more about arbitration in Switzerland may become members of the Swiss Arbitration Association (ASA). Literature on arbitration in Switzerland is galore. Among many, consult, *inter alia*, the following:

- ASA Bulletin (the quarterly Journal of the Swiss Arbitration Association), M. Scherer and A. Kunz (Editors) (Kluwer Law)
- B. Berger and F. Kellerhals, *International and Domestic Arbitration in Switzerland* (Stämpfli Publishers, 4th ed., 2021)
- G. Kaufmann-Kohler and A. Rigozzi, *International Arbitration: Law and practice in Switzerland* (OUP, 3rd ed., 2015)
- D. Girsberger and N. Voser, *International Arbitration in Switzerland* (Schulthess, 5th ed., 2024)
- ICCA International Handbook on Commercial Arbitration, M. Patocchi and D. Durante, Switzerland country chapter (Kluwer Law, October 2023)
- The main commentaries on the SPILA (Basler, Berner, Romand)
- Swiss Rules of International Arbitration: Commentary, T. Zuberbühler, C. Müller and P. Habegger (Editors) (Schulthess, 3rd ed., 2023)
- Arbitration in Switzerland – The Practitioner's Guide, M. Arroyo (Editor) (Kluwer Law, 2nd ed, 2018)

(ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?

As one of the leading venues for arbitration, many arbitration events and conferences take place in Switzerland every year. In particular, the ASA and the Swiss Arbitration Centre are very active and regularly organize educational events and conferences on various arbitration topics every year.

XVIII. Trends and Developments

(i) Do you think that arbitration has become a real alternative to court proceedings in your country?

Most domestic disputes are referred to the courts, not to arbitral tribunals. On the other hand, international disputes, with or without connection to Switzerland, are commonly referred to arbitration.

(ii) What are the trends in relation to other ADR procedures, such as mediation?

Mediation is becoming an increasingly important tool for conflict resolution in Switzerland.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

Chapter 12 of the SPILA which governs all international arbitration proceedings in Switzerland was lightly revised in 2021, including now a provision allowing parties to use English in annulment cases (Article 77(1)(2bis) Swiss Federal Tribunal Act).

(iv) Are there any official plans to reform the arbitration laws and practice in your jurisdiction?

No.

(v) Are there any rules governing third-party funding in your jurisdiction? Is there an obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third party funder? Have there been any recent court decisions in your jurisdiction in relation to third-party funding?

This topic is hotly debated but has not yet led to changes in the law. Therefore, the general standards on conflicts, impartiality, and independence apply. Arbitration institutions may have their own practices. For instance, paragraph 100 of the Practice Note to the Swiss Rules recalls that in case third-party funding is resorted to by any party, that party is expected to disclose the existence and identity of the third-party funder, so as to enable each arbitrator to run a conflict check to ensure that the involvement of the third-party funder does not affect his or her independence or impartiality.

(vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent court decisions in your country in relation to the impact of sanctions on international arbitration proceedings?

Swiss courts will scrutinize on a case-by-case basis whether the sanctions at hand amount to public policy.