

Arbitration in (and around) Switzerland



Why Switzerland?

A tradition of excellence, particularly for arbitration, offering:

- World-renowned arbitration centres: Geneva, Zurich and more...
- A legal framework relevant to arbitration proceedings worldwide
- Culturally diverse, multi-lingual, politically neutral and stable, user-friendly
- Home to many international and dispute resolution organisations
- International arbitration know-how : ASA and the Swiss Arbitration Hub

ICC: Switzerland as place of arbitration in 2016

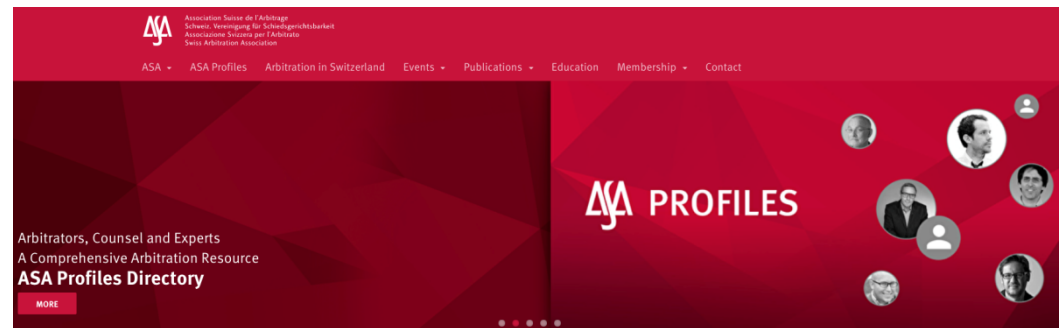
Country	Number of times agreed by the parties	Number of times fixed by the Court	Total
France	76	20	96
Switzerland	82	8	90
USA	72	8	80
United Kingdom	63	2	65
Germany	28	1	29
Singapore	22	4	26
China	8	0	8
UAE	10	1	11

ASA — Swiss Arbitration Association

- 1200+ members worldwide
- A leading thought centre
- ASA Profiles: 800+ arbitrator, counsel and expert profiles
- ASA Bulletin, ASA Special Series
- ASA Events

arbitration-ch.org

profiles.arbitration-ch.org



ASA - Swiss Arbitration Association

ASA is a non-profit association with over 1200 members - of whom more than 450 from outside Switzerland, all practitioners and academics engaged and/or interested in domestic and international arbitration.

Membership is open to all nationalities, irrespective of the level of experience. Since its creation in 1974 it has become one of the leading arbitration associations, bringing together the world's most eminent arbitration practitioners. [More](#)

President's Message

Read the latest President's Message: ["The Cup Of The Nineteen Jewels - The Journey Continues."](#)

Questions or suggestions?

Elliott Geisinger, President
Alexander McLin, Executive Director
ASA Bulletin: Matthias Scherer



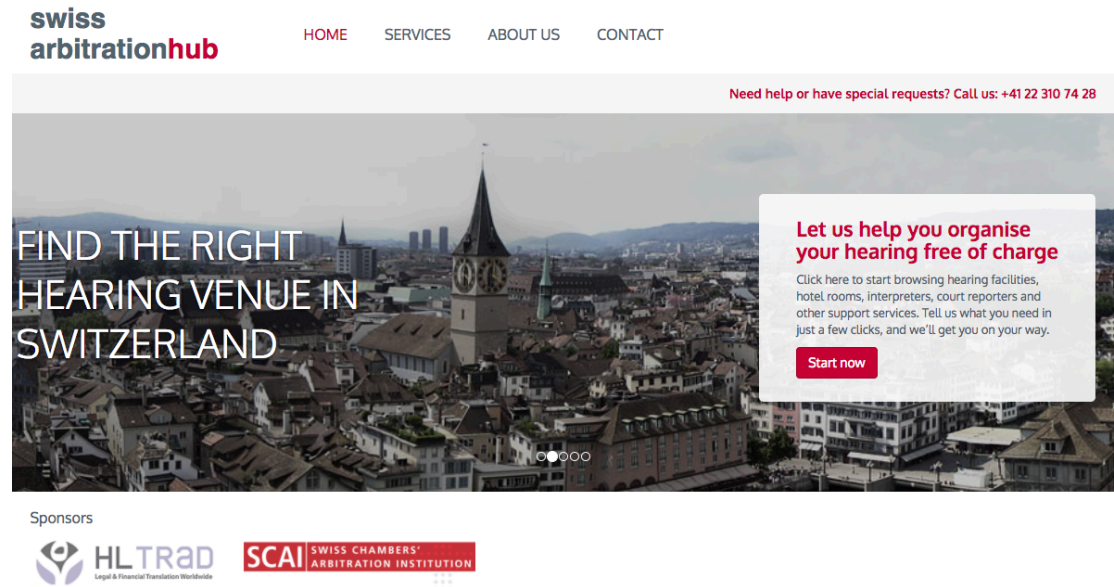
[linkedin.com/company/3121281](https://www.linkedin.com/company/3121281)



[@asaarbitration](https://twitter.com/asaarbitration)

Swiss Arbitration Hub

- A one-stop solution for hearing facilities
- Book hearing rooms
- Book interpreters and court reporters
- Reporters
- Other technical needs
- Many offers from a few clicks



The screenshot shows the homepage of the Swiss Arbitration Hub. At the top left is the logo "swiss arbitrationhub". To its right are navigation links: "HOME", "SERVICES", "ABOUT US", and "CONTACT". A phone number "Need help or have special requests? Call us: +41 22 310 74 28" is displayed in the top right. The main banner features an aerial view of a Swiss city with a prominent church spire. Overlaid on the left side of the banner is the text "FIND THE RIGHT HEARING VENUE IN SWITZERLAND". On the right side of the banner is a white box with the text "Let us help you organise your hearing free of charge" and a subtext: "Click here to start browsing hearing facilities, hotel rooms, interpreters, court reporters and other support services. Tell us what you need in just a few clicks, and we'll get you on your way." Below this text is a red "Start now" button. At the bottom of the page, under the heading "Sponsors", are logos for "HLTRAD Legal & Financial Translation Worldwide" and "SCAI SWISS CHAMBERS' ARBITRATION INSTITUTION".

[swissarbitrationhub.com](https://www.swissarbitrationhub.com)

Favourable Legislation

Chapter 12 of the Swiss Private International Act ("PILA") of 18 December 1987

- Applies when (i) the seat of the arbitral tribunal is in Switzerland and (ii) at least one of the parties had, at the time of the conclusion of the arbitration agreement, its seat or domicile abroad (PILA 176)
- Broad definition of arbitrability: any dispute involving a "financial interest" is arbitrable (PILA 177)
- Free selection of procedural rules and substantive law (PILA 182 /187)
 - compatible with rules of all major arbitration institutions, including CIMAC
- Freedom to retain counsel, arbitrators, language and hearing venue of your choice
- Swiss courts are supportive of arbitration (PILA 183 /185)

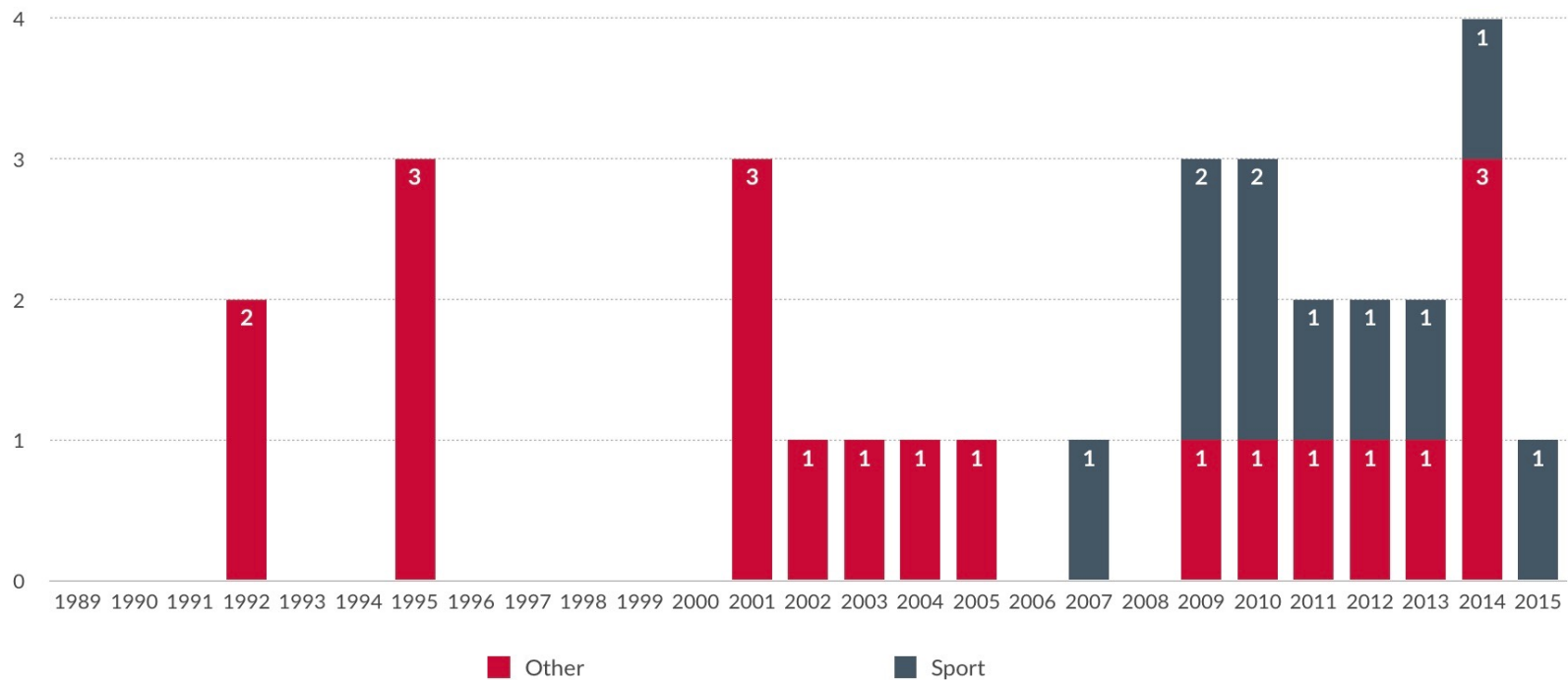
Finality of Arbitral Awards

- The award is final from its notification (PILA 190(1))
- Limited and exhaustive grounds for challenging the arbitral award (PILA 190(2))
 - a) Improper constitution of the arbitral tribunal
 - b) Incorrect decision on jurisdiction
 - c) *Ultra, extra or infra petita*
 - d) Violation of equal treatment or the right of the parties to be heard in adversarial proceedings
 - e) Incompatibility with public policy
- Possibility to waive the right to challenge the award (PILA 192)

Challenge of Awards in Switzerland

- Fast, efficient and cost-effective "one shot" challenge proceedings
- One-instance review
 - Challenge proceedings directly brought before the Swiss Federal Supreme Court (PILA 191)
- In principle, one exchange of briefs, no hearing
- Decision in approx. 5 to 7 months
- Narrow interpretation of the grounds for setting aside the award
 - Chance of success of challenge proceedings around 7% in non-sports arbitration (20 out of 282 cases until 2015; 9.7% in sports arbitration (10 out of 103 cases))

Successful challenges per year, 1989 – 2015



Felix Dasser, Piotr Wójtowicz, Challenges of Swiss Arbitral Awards - Updated and Extended Statistical Data as of 2015.

The challenge of awards before the Swiss Federal Tribunal

Grounds of appeal – success by grounds invoked in 385 cases on the merits, 1989 - 2015

Grounds of challenge admitted	Challenges	Successful Challenges (in absolute terms)	Successful Challenges (in %)
Constitution	48	2	4.2%
Jurisdiction	132	14	10.7%
Ultra/infra petita	62	2	3.2%
Equal treatment / right to be heard	191	11	5.8%
Ordre public	175	2	1.1%

Why Swiss Law?

The *success* of Swiss law:

- Preferred choice as neutral law
- Easy access
- Party autonomy
- Main contract law principles

A preferred choice as neutral law

Swiss law is a good compromise

It is a cost-efficient system.

It is codified and easy to read.

A frequent choice in parties' agreement

Easy Access

- Website of the Federal Authorities of the Swiss Confederation: www.admin.ch (in French, German, Italian and English)
- Swiss Law Bibliography and several books/commentaries published in English
- Website of the Federal Tribunal: <http://www.bger.ch/de/index.htm>
- A useful website presenting a thorough collection of resources regarding Swiss law: <http://www.llrx.com/features/swiss.htm>
- English translations of Federal Tribunal's decisions on challenges of arbitral awards: <http://www.swissarbitrationdecisions.com/>
- ASA website contains a wealth of information: <http://www.arbitration-ch.org/en/publications/asa-publications/index.html>

Party autonomy

- Principle of freedom of contract
- Few mandatory law provisions
- Exclusion or limitation of liability clauses
- Limited court intervention

Main principles applicable to contracts

- Good faith:
 - ⇒ An agreement will be interpreted by following the “principle of confidence” (Vertrauensprinzip/ principe de la confiance).
 - ⇒ That means that the contract will be understood in light of the meaning the addressee could in good faith attribute to it.
- Validity:
 - ⇒ An agreement on essential points suffices, according to Art. 2 Swiss Code of Obligation.
 - ⇒ Reservations of ancillary points are then presumed not to affect the binding nature of the contract.
- Interpretation:
 - ⇒ According to Art. 18 Swiss Code of Obligation, the contract must be interpreted by following the real and mutual intent of the parties.
 - ⇒ That makes the interpretation of contract under Swiss law less strict than under the English and American tradition.