Arbitration in (and around) Switzerland

Casablanca, Morocco, 3 November 2017
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

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

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

linkedIn.com/company/3121281

profiles.arbitration-ch.org

@asaarbitration
Swiss Arbitration Hub

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

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

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

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

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.