

Swiss Arbitration Centre

Supplemental Swiss Rules
for Trust, Estate and Foundation Disputes



Supplemental Swiss Rules for Trust, Estate and Foundation Disputes

July 2025

Languages

The Supplemental Swiss Rules for Trust, Estate and Foundation Disputes are available in several languages on the Swiss Arbitration website: www.swissarbitration.org/centre/arbitration/arbitration-rules.

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Introduction

- (a) The Swiss Rules of International Arbitration (the “**Swiss Rules**”), last revised in 2021¹, provide a modern and effective framework for the resolution of disputes.
- (b) Arbitration proceedings under the Swiss Rules are administered by the Arbitration Court (the “**Court**”) of the Swiss Arbitration Centre. The Court is assisted in its work by the Secretariat of the Court (the “**Secretariat**”).
- (c) Most cases administered by the Court have traditionally been commercial disputes, involving two or more legal entities. However, the Court also has a history of administering disputes between individuals, including private-wealth disputes related to trusts, estates or foundations. In those cases, the heirs or beneficiaries agreed to arbitrate their disputes under the Swiss Rules.
- (d) As of 1 January 2021, the Swiss Civil Procedure Code (“**CPC**”) and Chapter 12 of the Swiss Private International Law Act (“**PILA**”), which govern domestic and international arbitration in Switzerland respectively, expressly provide that their provisions apply *mutatis mutandis* to arbitration clauses contained in *unilateral legal instruments* or articles of association (Article 178(4) of the PILA and Article 358(2) of the CPC).
- (e) These provisions confirm that arbitration clauses contained in unilateral instruments regulating trust², estate and foundation matters (“Unilateral Arbitration Clauses”) are valid as a matter of Swiss law, provided that they stipulate a seat of arbitration in Switzerland. A testator may thus include an arbitration clause in the testator’s testamentary disposition, thereby requiring that any disputes arising therefrom, whether between heirs, legatees, and/or an executor, be referred to arbitration. Likewise, Swiss arbitration law permits the inclusion of Unilateral Arbitration Clauses in trust and foundation deeds. Although trusts are not a legal construct provided for under Swiss law, Switzerland recognizes foreign trusts, having ratified the Hague Convention on the Law Applicable to Trusts and their Recognition on 1 July 2007.
- (f) Many disputes related to trusts, estates and foundations (“**TEF Disputes**”) are amenable to resolution through arbitration. TEF Disputes include those arising between heirs regarding the division of an estate; heirs and legatees arising out of a will, including regarding its validity; the spouse and children of a decedent, including relating to the applicable matrimonial regime if relevant to the estate dispute; or between the heirs and the executor and between beneficiaries of a foundation and the foundation’s board. Similarly, TEF Disputes may include internal disputes arising out of or in connection with a trust, as defined in the trust instrument, including those between or among trustees; trustees and protectors; beneficiaries; or between trustees and/or protectors and beneficiaries. TEF Disputes are not limited to disputes arising out of unilateral legal instruments: disputes between parties to an inheritance contract also qualify as TEF Disputes. TEF Disputes do not, however, include disputes arising between heirs or trustees, on the one hand, and third parties, on the other, as the jurisdiction conferred by the Unilateral Arbitration Clause (or arbitration clauses contained in inheritance contracts and the like) will generally not extend to such third parties.³
- (g) Resolving TEF Disputes by arbitration is not only possible, but may also have advantages. For instance, where the testator had assets and spent time in several jurisdictions, or where the heirs have their habitual residence or domicile in different jurisdictions, providing for the resolution of disputes by arbitration allows greater certainty and predictability and avoids lengthy and costly jurisdictional battles and/or parallel court proceedings in different jurisdictions unknown to (some of) the heirs. The latter point is of particular relevance where a decedent had assets in the EU, given that the European Succession Regulation (EU) No 650/2012 (Brussels IV) allows for

¹ https://www.swissarbitration.org/wp-content/uploads/2024/09/Swiss-Arbitration-Centre_International-Swiss-Rules-2021-EN.pdf.

² In some trust jurisdictions, legal instruments regulating trusts are considered bilateral legal arrangements or quasi-contractual relationships between settlor and trustee. Such legal instruments are also included by the term Unilateral Arbitration Clauses.

³ Non-signatories of the Unilateral Arbitration Clause such as heirs or beneficiaries of foundations or trusts, even if they are putative/disputed heirs or beneficiaries, are not considered to be third parties.

parallel court proceedings where a decedent with his or her last habitual residence outside the EU had assets within the EU (cf. Articles 4 et seq.).

- (h) Arbitration also allows the parties to tailor the proceedings to meet their specific needs. This applies not only to the procedure itself, but also – and importantly – to the selection of arbitrators having the requisite skills and experience to adjudicate their dispute, such as expertise in (international) inheritance or trust law or specific language skills. Arbitration also allows the parties to agree on the confidentiality of the proceedings, a feature that may be of particular interest when significant assets or persons of public interest are involved.
- (i) A degree of legal uncertainty nonetheless remains regarding possible limits to arbitral jurisdiction and the enforceability of awards in TEF Disputes, in particular when based on Unilateral Arbitration Clauses. This may be the case, for instance, with regard to heirs benefitting from statutory entitlements, i.e. heirs that are entitled to a minimum share of an estate. In Switzerland, such heirs are generally considered as bound by Unilateral Arbitration Clauses found in wills only if they consent to the application of such clauses. Arbitral jurisdiction may also be impaired in international cases involving real estate, as some jurisdictions provide for the exclusive jurisdiction of the courts of the state where the real estate assets are located. Equally, in some jurisdictions, it is not possible to oust the jurisdiction of supervisory or trust courts by way of arbitration. The existence and scope of such limitations will depend on the jurisdictions involved. Accordingly, parties wishing to include Unilateral Arbitration Clauses in their legal instruments and/or arbitration clauses in their contracts are advised to consider the applicable law and the arbitration law in all of the relevant or potentially relevant jurisdictions in order to identify factors that might pose a problem at a later stage, including on enforcement, such as (i) any limitations on the arbitrability of TEF Disputes or the jurisdiction of arbitral tribunals, for instance in cases involving real estate assets; (ii) any requirements as to the form of an arbitration clause in a will; (iii) the validity and/or binding effect of a Unilateral Arbitration Clause in a will or similar deed, in particular vis-à-vis heirs benefitting from statutory entitlements; (iv) possible limitations to the free selection of the applicable substantive law; (v) whether the relevant jurisdiction is a signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“**New York Convention**”); and (vi) whether TEF Disputes qualify as commercial disputes under the New York Convention.
- (j) The Swiss Rules in their current form already extend to arbitrations arising out of Unilateral Arbitration Clauses. However, to account for the specificities of TEF Disputes and ensure that TEF Disputes can be settled under the Swiss Rules even more efficiently and effectively, the Swiss Arbitration Centre has issued the Supplemental Swiss Rules for Trust, Estate and Foundation Disputes (the “**Supplemental Swiss TEF Rules**” or the “**TEF Rules**”), in force as from 1 July 2025. The TEF Rules comprise a short set of provisions that are designed to supplement the Swiss Rules and tailor the arbitration proceedings specifically to TEF Disputes. The TEF Rules are accompanied by a series of Model Arbitration Clauses that can be directly incorporated into wills, trust and foundation deeds, or inheritance contracts. When drafting the TEF Rules, the Swiss Arbitration Centre consulted trust specialists across several jurisdictions, including Bermuda, the BVI, Guernsey, Jersey, Liechtenstein, Singapore, the UK, and Switzerland.
- (k) An Explanatory Note provides background and guidance on the use of the TEF Rules.⁴

⁴Swiss-Arbitration-Centre-Explanatory-Note-EN.pdf.

Model Arbitration Clauses for Trust, Estate and Foundation Disputes

- (1) Drafting arbitration clauses for TEF Disputes requires special care. There is no “one size fits all” solution and consideration must be given to the specific legal instrument into which the arbitration clause will be incorporated, as well as the relevant requirements pertaining to the binding effect of an arbitration clause and the form of such clause.
- (2) Moreover, while the Model Arbitration Clauses set out below cover the essential elements of an arbitration clause, parties may wish to include additional content. For example, heirs in estate disputes may not have the means to finance the proceedings. Therefore, a testator may wish to include language granting the executor of the will the power to pay the deposit for the costs of the arbitration in relation to the will, whether in full or in part, on behalf of one or more heirs. Parties may also wish to further expand on the already existing confidentiality provision contained in Article 44 of the Swiss Rules.

Model Arbitration Clause in a Last Will (by the testator before death):

- (3) The below model clause may be included in last wills by the testator.

Any dispute, controversy, or claim arising out of, or in relation to the above last will shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration including the Supplemental Swiss Rules for Trust, Estate and Foundation Disputes (TEF Rules) in force on the date when the Notice of Arbitration is submitted in accordance with those Rules. The number of arbitrators shall be ... (“one”, “three”, “one or three”). The seat of the arbitration shall be ... (name of city in Switzerland, unless the parties agree on a city in another country). The arbitral proceedings shall be conducted in ... (insert desired language).

Model Arbitration Clause in an Inheritance Contract (among the heirs, after the death of the deceased):

- (4) The below model clause may be included in an agreement among heirs after the death of the deceased.⁵

Any dispute, controversy, or claim arising out of, or in relation to the estate of ... (insert decedent: first name, name, birth date, date of death, citizenship, address) shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration including the Supplemental Swiss Rules for Trust, Estate and Foundation Disputes (TEF Rules) in force on the date when the Notice of Arbitration is submitted in accordance with those Rules. The number of arbitrators shall be ... (“one”, “three”, “one or three”). The seat of the arbitration shall be ... (name of city in Switzerland, unless the parties agree on a city in another country). The arbitral proceedings shall be conducted in ... (insert desired language).

Model Arbitration Clause in an Inheritance Contract (among the heirs, before the death of the deceased):

- (5) The below model clause may be included in inheritance contracts among the heirs before the death of the deceased.

Any dispute, controversy, or claim arising out of, or in relation to the above inheritance contract of ... (insert testator(s): first name, name, birth date, citizenship, address) or the inheritance contract dated (insert date): first name, name, birth date, citizenship, address) shall be resolved by arbitration in accordance the Swiss Rules of International Arbitration including the Supplemental Swiss Rules for Trust, Estate and Foundation Disputes (TEF Rules) in force on the date when the Notice of Arbitration is submitted in accordance with those Rules. The number of arbitrators shall be ... (“one”, “three”, “one or three”). The seat of the arbitration shall be ... (name of city in Switzerland, unless the parties agree on a city in another country). The arbitral proceedings shall be conducted in ... (insert desired language).

⁵ The model clause may be used as a standalone agreement or be included as a clause in an inheritance contract also containing other substantive or procedural agreements among the heirs.

Model Arbitration Clause in a Trust Deed:

- (6) In contrast to other model clauses, the below model clause for inclusion in trust deeds is drafted as an agreement between the original parties to the trust instrument to ensure that not only the settlor and the trustee, but also the protector and any persons benefitting from the trust are bound by the arbitration clause. This is intended to ensure that any beneficiary claiming or accepting a benefit, interest or right under the trust, shall be deemed to have agreed to the provisions of the arbitration clause and will be bound by its terms.
- (7) When including an arbitration clause in a trust deed or when amending such clause later on, in addition to addressing the general requirements for such Unilateral Arbitration Clause, a party may wish to consider whether, and if so how, to restrict the trustee's rights to seek directions from a competent state court. This is a matter not addressed in the TEF Rules or the model arbitration clauses that must be considered on a case-by-case basis, depending on the law governing the trust.

Any dispute, controversy or claim arising out of or in relation to this Trust [as defined in the trust instrument], including regarding the validity of its establishment shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration including the Supplemental Swiss Rules for Trust, Estate and Foundation Disputes (TEF Rules) in force on the date when the Notice of Arbitration is submitted in accordance with those Rules. The settlor, the original trustee(s) and the original [protector(s)] [other original power-holder(s)] hereby agree to the provisions of this arbitration clause, and each successor trustee and [protector] [other powerholder], by acting or agreeing to act under the Trust, also agrees, or shall be deemed to have agreed, to the provisions of this arbitration clause. A beneficiary submits to this arbitration clause by accepting any benefit, interest or right from the trust. The trustee can require the beneficiary to confirm this in writing. Refusal of confirmation is deemed to be a waiver of the benefit, interest or right. The number of arbitrators shall be ... ("one", "three", "one or three"). The seat of the arbitration shall be ... (name of city in Switzerland, unless the parties agree on a city in another country). Upon request, the arbitral tribunal can move its seat to the seat of the trust if this is necessary for the validity of the arbitral award for the trust under trust law. The arbitral proceedings shall be conducted in ... (insert desired language).

Model Arbitration Clause in the Statutes of a Foundation:

- (8) The below model clause may be included in the statutes of a foundation.

Any dispute, controversy or claim between the foundation, its bodies, the founder or beneficiaries in connection with this foundation shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration including the Supplemental Swiss Rules for Trust, Estate and Foundation Disputes (TEF Rules) in force on the date on which the Notice of Arbitration is submitted in accordance with those Rules. This includes disputes over the existence of specific designated beneficiaries or classes of beneficiaries and the extent of any entitlement, the rules for determination of the beneficiaries, the validity, invalidity, change or dissolution of the foundation, challenges to resolutions and supervisory measures. A beneficiary submits to this arbitration clause by accepting any benefit, interest or right from the foundation. The foundation can require the beneficiary to confirm this in writing. Refusal of confirmation is deemed to be a waiver of the benefit, interest or right. The number of arbitrators shall be ... ("one", "three", "one or three"). The seat of the arbitration shall be ... (name of city in Switzerland, unless the parties agree on a city in another country). The arbitral proceedings shall be conducted in ... (insert desired language).

The Supplemental Swiss Rules for Trust, Estate and Foundation Disputes

SCOPE OF APPLICATION

Article 1

1. The Supplemental Swiss Rules for Trust, Estate and Foundation Disputes (the “Supplemental Swiss TEF Rules”, or the “TEF Rules”) apply to all arbitration proceedings initiated pursuant to an arbitration clause providing for arbitration pursuant to the Swiss Rules of International Arbitration (the “Swiss Rules”) where such arbitration clause is contained in a unilateral legal instrument regulating trust, estate or foundation matters (the “Unilateral Arbitration Clause”). The TEF Rules shall also apply where the Arbitration Agreement or a Unilateral Arbitration Clause provides for arbitration pursuant to the TEF Rules or the Introductory Rules of the Swiss Association for Arbitration in Inheritance Matters (“Schweizerischer Verein Schiedsgerichtsbarkeit in Erbsachen”) or where agreed by the parties.

2. The TEF Rules supplement the Swiss Rules. To the extent the TEF Rules do not specifically regulate a matter, the provisions of the Swiss Rules shall apply. Wherever the provisions of the Swiss Rules defer to an agreement between the parties, this shall be interpreted, in the case of a Unilateral Arbitration Clause, as referring to any instructions contained within such clause or the corresponding legal instrument.

3. This version of the TEF Rules, in force as from 1 July 2025, shall apply to all arbitration proceedings falling within the scope defined in Article 1(1) and in which the Notice of Arbitration is submitted on or after that date, unless otherwise agreed by the parties or provided by the Unilateral Arbitration Clause or the Arbitration Agreement.

INFORMATION, NOTIFICATION AND REPRESENTATION OF ENTITLED PERSONS

Article 2

1. Subject to the express provisions in the Unilateral Arbitration Clause, the parties shall be responsible for ensuring that all entities or persons, born or unborn, whose rights or entitlements might be affected by their dispute (“Entitled Persons”) are named as parties to the arbitration or otherwise informed thereof and given the opportunity to have their interests represented in accordance with any applicable rules of mandatory law or the unilateral legal instrument.

2. In addition to the items identified in Article 3(3) of the Swiss Rules, the Notice of Arbitration shall, where appropriate, include the following:

- (a) a list of all Entitled Persons, together with a brief description of their relationship to the relevant legal instrument, the parties and the dispute, including, where applicable and available, their names, addresses, telephone numbers, and e-mail addresses and those of their representatives; and
- (b) an indication of any such Entitled Persons that might require the appointment of a legal representative, together with a concrete proposal setting forth the steps to be undertaken by the parties for the appointment of such legal representative.

3. In addition to the items set forth in Article 4(1) of Swiss Rules, the Answer to the Notice of Arbitration shall, where appropriate, include the Respondent’s comments on the information provided in the Notice of Arbitration pursuant to Article 2(2) above.

4. The Secretariat shall notify the Notice of Arbitration and Answer to the Notice of Arbitration together with any exhibits to the Entitled Persons identified by the parties.

5. To the extent that Entitled Persons are neither identified by the parties nor invoke their right to participate in the proceedings, the arbitral tribunal may ask the Secretariat to notify the Notice of Arbitration and Answer to the Notice of Arbitration together with any exhibits to such Entitled Persons.

6. The confidentiality obligations applicable to the parties pursuant to Article 44(1) of the Swiss Rules apply equally to Entitled Persons.

APPOINTMENT OF THE ARBITRAL TRIBUNAL

Article 3

1. The appointment of the arbitral tribunal shall be governed by Articles 10 and 11 of the Swiss Rules, subject to the following special provisions, which however shall not apply if the Unilateral Arbitration Clause or Arbitration Agreement provides for the appointment of the arbitrator(s) by the Court.

2. Where Entitled Persons have been identified, the Court shall fix a time limit within which they may submit comments on the appointment of the arbitral tribunal. The Court shall inform the Entitled Persons who so request of each procedural step in the appointment of arbitrators. Following the designation of each arbitrator and prior to the arbitrator's confirmation by the Court, the Entitled Persons may submit reasoned written comments or objections concerning the appointment of the designated arbitrator to the Court. In case of any disclosure by any designated or confirmed arbitrator, the Entitled Persons may submit reasoned written comments or objections within the same time limit within which the parties to the arbitration proceedings may comment. For these purposes, the Court shall, upon request, provide to the Entitled Persons its pertinent correspondence with the parties and the arbitrators. The Court shall take into account any comments and objections by Entitled Persons when confirming the respective arbitrator in accordance with Article 8(1) of the Swiss Rules. The Court shall transmit a copy of its confirmation to the Entitled Persons who submitted written comments or objections. The Court may, on its own initiative, make available to the Entitled Persons any information that it deems relevant.

3. Where not all Entitled Persons are legally represented or where it appears appropriate in the circumstances, the Court may appoint some or all of the arbitrators, and, if applicable, shall appoint the presiding arbitrator.

APPLICABLE SUBSTANTIVE LAW IN ESTATE MATTERS

Article 4

Article 35 of the Swiss Rules shall not apply to estate matters.