

ARBITRATION IN SWITZERLAND

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1. The legal framework

1.1 The Swiss Code on Private International Law

1.1.1 Switzerland has codified its rules on international arbitration in Articles 176–194 (**Chapter 12**) of its Federal Code on Private International Law of 1987 (**Swiss CPIL**).

1.1.2 Until 2010, purely domestic arbitration continued to be subject to the cantonal laws and the Inter-cantonal Arbitration Convention. Since 1 January 2011, domestic arbitration is governed by Articles 353–399 of the Federal Civil Procedure Code (**CPC**), unless the parties agree to submit their dispute to Chapter 12 of the Swiss CPIL.¹

1.1.3 This overview will address the rules of Chapter 12 of the Swiss CPIL as the source of rules governing international arbitration.

1.1.4 Chapter 12 is tailored to the needs of the international business community and affirms Switzerland’s longstanding tradition as a leading location for international commercial arbitration.

1.1.5 The law emphasises party autonomy by allowing the parties to determine the applicable procedural rules. The parties may create their own procedural rules or contractually refer to the procedural rules of a chosen arbitral institution, for example the Swiss Rules,² the ICC Arbitration Rules³ or the UNCITRAL Arbitration Rules (1976).⁴

1.2 The Swiss Rules as institutional rules

1.2.1 The Swiss Rules of International Arbitration (**Swiss Rules**),⁵ being the applicable procedural rules if referred to by the parties, are the result of harmonisation efforts undertaken by the Chambers of Commerce of Zurich, Geneva, Basle, Berne, Lausanne and Lugano. As of 1 January 2004, the Swiss Rules replaced the arbitration rules of each Chamber, among them the previous International Arbitration Rules of the Zurich Chamber of Commerce. Since 2008, the Swiss Rules also govern disputes under the auspices of the Chamber of Commerce of Neuchâtel.

¹ CPC, art 353.

² CMS Guide to Arbitration, vol II, appendix 3.15.

³ *Ibid*, appendix 3.7.

⁴ *Ibid*, appendix 3.1.

⁵ *Ibid*, appendix 3.15.

- 1.2.2 The Swiss Rules are based on the UNCITRAL Arbitration Rules (1976)⁶, to which changes and additions have been made. In particular, certain modifications were necessary to adapt the UNCITRAL Arbitration Rules (1976) to institutional arbitration.
- 1.2.3 The Swiss Rules came into force on 1 January 2004. Unless agreed otherwise by the parties, the Swiss Rules apply to all arbitral proceedings initiated on or after 1 January 2004 if the parties referred to the procedural rules of one of the participating Chambers of Commerce in their arbitration agreement.
- 1.2.4 The Swiss Rules were well received by the users of international arbitration. They have grown to be well-established rules and several hundred arbitral proceedings have already been conducted efficiently and successfully under the Swiss Rules.
- 1.2.5 A revised version of the Swiss Rules will be introduced during the course of 2012 (**2012 Swiss Rules**) which will reflect the developments in international arbitration over the last eight years. Besides a number of smaller changes and amendments, a procedure for emergency relief will be introduced. The 2012 Swiss Rules will apply to all arbitral proceedings in which the notice of arbitration is submitted on or after the date on which the 2012 Swiss Rules enter into force.⁷

2. The scope of application and general provisions of the Swiss CPIL

2.1 The scope of application

- 2.1.1 The scope of application of Chapter 12 is broad. Articles 176–194 of the Swiss CPIL apply to all arbitral proceedings with the seat of arbitration in Switzerland if, at the time the arbitration agreement was concluded, at least one of the parties was domiciled or had its ordinary residence outside of Switzerland.⁸
- 2.1.2 In purely domestic disputes, Articles 353–399 of the CPC apply unless the parties expressly agree that, instead of the CPC, Chapter 12 of the Swiss CPIL shall govern

⁶ *Ibid.*

⁷ The complete text of the 2012 Swiss Rules will be published as part of the online version of the CMS Guide to Arbitration at www.cms-arbitration.com as soon as they become available.

⁸ Swiss CPIL, art 176(1).

their dispute.⁹ Conversely, in international cases, the parties can explicitly agree that Articles 353–399 of the CPC are to apply instead of Articles 176–194 of the Swiss CPIL.¹⁰

- 2.1.3 The seat of arbitration is determined by the parties themselves (in the arbitration agreement or at a later time), by the arbitral institution designated by them or, failing both, by the arbitrators.¹¹

2.2 General principles

- 2.2.1 Swiss law on international arbitration reflects the major judicial and legislative developments in the area of international arbitration during the past decades. It is based on the following general principles:

- wide scope of application;
- broad concept of arbitrability and favourable approach towards the validity of arbitration agreements by limiting formal requirements;
- emphasis on party autonomy by allowing the parties to determine the applicable procedural and substantive law;
- the equal treatment of the parties and the right to be heard;
- recognition of the finality of the award;
- significant restrictions on intervention by state courts and grounds to challenge an award in the state courts; and
- the option to exclude actions for setting aside the award.

2.3 Transitional provisions

- 2.3.1 The Swiss CPIL does not state to what extent it applies to arbitration agreements concluded before the enactment of the Swiss CPIL on 1 January 1989. The Swiss Federal Supreme Court has ruled that the validity of an arbitration agreement which was concluded before the entry into force of the Swiss CPIL on 1 January 1989 must conform to the requirements of the formerly applicable law on international arbitration (the Inter-cantonal Convention). However, where such arbitration agreement meets the requirements under the Inter-cantonal Convention, the conduct of any arbitral proceedings arising out of that agreement and commenced after 1 January 1989 will be governed by Chapter 12 of the Swiss CPIL.¹²

⁹ CPC, art 353.

¹⁰ Swiss CPIL, art 176(2).

¹¹ *Ibid*, art 176(3).

¹² Swiss Federal Supreme Court, 27 April 1993, BGE 119 II 179.

3. The arbitration agreement

3.1 Formal requirements

3.1.1 In relation to the formal requirements of an arbitration agreement, Swiss law avoids any reference to domestic or foreign legislation and, instead, establishes an independent substantive rule. Under Article 178(1) of the Swiss CPIL, which is inspired by the Model Law (1985),¹³ an arbitration agreement, in order to be formally valid, must be made in writing, by telegram, telex, fax or any other means of communication by which the agreement is evidenced in writing. Nowadays, an email printout should also suffice. In other words, a document actually signed by both parties is no longer necessary and an exchange of documents is not a prerequisite for a valid arbitration agreement, regardless of Article II(2) of the New York Convention.¹⁴

3.2 Arbitrability

3.2.1 Pursuant to Article 177(1) of the Swiss CPIL, a dispute relating to any economic interest can be the subject matter of arbitral proceedings, regardless of whether the substantive law governing the underlying contractual relationship relies on a narrower definition of “objective arbitrability”.¹⁵ The arbitral tribunal does not have to inquire into the substance of the applicable substantive law in order to determine whether a claim is arbitrable.¹⁶ In this context, Chapter 12 of the Swiss CPIL introduced a provision regarding objections raised by states and state-controlled organisations against the arbitrability of disputes. Article 177 of the Swiss CPIL dictates that if a state or a state-controlled organisation or enterprise is a party to an arbitration agreement, it cannot invoke its own national law in order to contest either its capacity to be a party to arbitral proceedings or the arbitrability of a dispute covered by the arbitration agreement.¹⁷

3.3 Separability

3.3.1 The validity of an arbitration agreement cannot be contested on the ground that the main contract is not valid or that the arbitration agreement concerns a dispute which has not yet arisen.¹⁸ The validity of the arbitration clause has to be determined separately.

¹³ CMS Guide to Arbitration, vol II, appendix 2.1.

¹⁴ Swiss Federal Supreme Court, 16 January 1995, BGE 121 III 43. For the New York Convention see CMS Guide to Arbitration, vol II, appendix 1.1.

¹⁵ Swiss Federal Supreme Court, 23 June 1992, BGE 118 II 356.

¹⁶ Swiss Federal Supreme Court, 23 June 1992, BGE 118 II 355.

¹⁷ Swiss CPIL, art 177(2).

¹⁸ Swiss CPIL, art 178(3), as confirmed by Swiss Federal Supreme Court, 2 September 1993, BGE 119 II 384.

3.4 Substantive validity

- 3.4.1 Apart from the requirement that the arbitration agreement must be in writing,¹⁹ the prerequisites of a valid arbitration agreement are governed by Article 178(2) of the Swiss CPIL. This provision gives preference to the validity of the arbitration agreement by providing that the agreement is valid if it conforms either to:
- (i) the law chosen by the parties;
 - (ii) the law governing the subject matter of the dispute, in particular, the law governing the main contract; or
 - (iii) Swiss law.
- 3.4.2 With respect to the question whether there was a consensus between the parties to submit their dispute to arbitration, the Swiss Federal Supreme Court tends to be rather restrictive. If in doubt, it often decides in favour of state court proceedings.²⁰ This restrictive approach does not apply in sport matters where the Swiss Federal Supreme Court is (sometimes overly) liberal in endorsing arbitration clauses, even where such clauses can only be found in the regulations of an association to which the contract makes just a general reference.²¹
- 3.4.3 Once the Swiss Federal Supreme Court confirms that there is a valid arbitration agreement, it generally favours a broad scope of application.²²

4. Composition of the arbitral tribunal

4.1 Constitution of the arbitral tribunal

- 4.1.1 Pursuant to Article 179(1) of the Swiss CPIL, arbitrators will be appointed, removed or replaced in accordance with the agreement of the parties. The parties may also refer to the procedural rules of an agreed arbitral institution, such as the Swiss Rules.
- 4.1.2 If there is no agreement between the parties, or if the rules of the selected arbitral institution are silent, the parties may request the assistance of the state court at the seat of arbitration, which will then act in accordance with the relevant provisions of the CPC. Where the parties have agreed that a state court shall appoint the arbitrator, the judge must make the appointment, unless a summary assessment shows that there is no valid arbitration agreement between the parties.²³

¹⁹ Swiss CPIL, art 178(1). See discussion at paragraph 3.1.1 above.

²⁰ Swiss Federal Supreme Court, 15 March 1990, BGE 116 Ia 56 and 16 October 2001, BGE 128 III 50.

²¹ Swiss Federal Supreme Court, 22 March 2007, BGE 133 III 244-245; 18 April 2011, case no. 4A_640/2010 (unpublished); 20 January 2010, case no. 4A548/2009 (unpublished); and 9 January 2009, case no. 4A460/2008 (unpublished).

²² Swiss Federal Supreme Court, 8 July 2003, BGE 129 III 675.

²³ Swiss CPIL, art 179, para 2 and 3; Swiss Federal Supreme Court, 27 February 1992, BGE 118 Ia 26.

4.1.3 If the state court refuses to appoint an arbitrator, the ruling can be brought before the Swiss Federal Supreme Court by way of an appeal.²⁴ In contrast, no appeal is available against the appointment of the arbitrator by a state court; only a preliminary or final award issued later by the arbitral tribunal may be challenged in the event that there was an improper appointment of the sole arbitrator or the arbitral tribunal.²⁵

4.2 Constitution of the arbitral tribunal in multi-party proceedings

4.2.1 The principle that the arbitral tribunal shall be constituted in accordance with the agreement of the parties also applies in cases where there are more than two parties involved. However, party autonomy is subject to the requirement of equal treatment, which prevents the claimant(s) or the respondent(s) from having an unequal influence on the constitution of the arbitral tribunal. The right to parity cannot be waived, as this would violate the mandatory provision of Article 182(3) of the Swiss CPIL, which ensures the parties' rights to equal treatment.²⁶

4.2.2 Typically, multiple parties agree on a three-member arbitral tribunal and allow each side, the claimant(s) and the respondent(s), to nominate one co-arbitrator. Providing that both (groups of) parties are able to agree on their co-arbitrator, this does not pose a problem.

4.2.3 However, where a plurality of claimants or respondents is unable to agree on a co-arbitrator, concerns may arise as to whether the claimants and the respondents have an equal influence on the constitution of the arbitral tribunal. Arguably, there is inequality in influence where one party can freely designate its co-arbitrator, while the multiple parties on the other side are unable to do so. This argument is more powerful where the inability of the multiple claimants or respondents to agree on the identity of their co-arbitrator is due to different interests within the group.

4.2.4 According to Swiss case law, this situation does not amount to an unequal treatment of the parties as long as the arbitrators fulfil the requirement of impartiality and independence.²⁷ The French Cour de Cassation took the opposite position in the well known Dutco case.²⁸ It is possible that state courts of other jurisdictions will follow the French approach, in particular where multiple parties

²⁴ Swiss Federal Supreme Court, 20 March 1995, BGE 121 I 81 and 27 February 1992, BGE 118 Ia 23.

²⁵ Swiss CPIL, art 190(2)(a); Swiss Federal Supreme Court, 11 September 1989, BGE 115 II 296.

²⁶ Swiss Federal Supreme Court, 11 November 1981, BGE 107 Ia 155 c 2b and 4.

²⁷ Cour de Justice de Genève, 26 November 1982 (unpublished), confirmed by the Swiss Federal Supreme Court, 16 May 1983, case no. P.1703/82 (unpublished).

²⁸ *Siemens AG/BKMI Industrieanlagen GmbH v Dutco Construction Company*, French Cour de Cassation, 7 January 1992.

convincingly state that they are unable to agree on a co-arbitrator due to their differing interests and/or different claims being raised against two or more respondents (as it was the case in Dutco). For that reason, where a plurality of claimants or respondents is unable to jointly appoint a co-arbitrator and the parties can plausibly explain that this is the result of their dissimilar positions and/or separate claims, Swiss courts and arbitral institutions should generally adhere to the Dutco decision by directly appointing all arbitrators. In the case of direct appointment of the whole arbitral tribunal, none of the parties has (preponderant) influence on the composition of the arbitral tribunal.

- 4.2.5 Where the parties have agreed on the application of institutional rules, such rules will govern the question of whether, and to what extent, the arbitral institution has the power to name all arbitrators. For example, the Swiss Rules²⁹ empowers the institution to appoint all arbitrators where a group of parties fails to designate its co-arbitrator.
- 4.2.6 Where the parties have not agreed on a procedure for appointing the arbitrators without the involvement of a state court, the judge at the seat of arbitration may be requested to take action if a plurality of claimants or respondents is unable to agree on its co-arbitrator. The judge will act in accordance with the relevant provisions of the CPC.³⁰ Article 362(2) of the CPC provides that, in the case of a multi-party arbitration, the judge may appoint all arbitrators.

4.3 Challenge of arbitrators

- 4.3.1 Pursuant to Article 180(1) of the Swiss CPIL, there are three grounds for challenging an arbitrator:
- (i) if the arbitrator does not meet the qualifications agreed upon by the parties;
 - (ii) if there is a ground for challenge under the rules of arbitration agreed upon by the parties; or
 - (iii) if the circumstances give rise to reasonable doubts as to the arbitrator's independence or impartiality.
- 4.3.2 Any arbitrator must be fully independent and impartial; the same strict standard applies to a sole arbitrator, a chair and any co-arbitrator.³¹

²⁹ Swiss Rules, art 8(5). See CMS Guide to Arbitration, vol II, appendix 3.15.

³⁰ Swiss CPIL, art 179(2).

³¹ Swiss Federal Supreme Court, 29 October 2010, 136 III 605.

- 4.3.3 A party may challenge its own arbitrator based only on reasons that the party became aware of after the appointment was made. The party must notify the arbitral tribunal and the other party of the grounds for the challenge without delay.³²
- 4.3.4 Where the parties have not agreed on the procedure for challenging an arbitrator, the state court at the seat of arbitration will decide on the challenge. The decision of the state court is final and it cannot be appealed to the Swiss Federal Supreme Court.³³
- 4.3.5 If the parties have agreed on a procedure for challenging the arbitrator without the involvement of a state court, the decision of the private institution cannot be the subject of a separate appeal to the Swiss Federal Supreme Court.³⁴ However, it is possible to submit the reasons for challenging the arbitrator which were not accepted by the private institution to the Swiss Federal Supreme Court for review when filing an appeal against a preliminary or final award by the arbitral tribunal. Such review is based on Article 190(2)(a) of the Swiss CPIL, which allows an appeal in the case of improper appointment of the sole arbitrator or improper constitution of the arbitral tribunal, including the lack of independence of an arbitrator.³⁵
- 4.3.6 In the event of a successful challenge or replacement of an arbitrator, the appointment of the substitute arbitrator is subject to the same rules as the appointment of the original arbitrators, unless the parties have agreed otherwise.

4.4 Responsibility of arbitrators

- 4.4.1 The arbitrators' duties and rights towards the parties arise from:
- the contract between the arbitrators and the parties (the arbitrator's contract or *receptum arbitrii*), which is a contract *sui generis*, with elements of both a service contract and a mandate, entering into force with the appointment of the arbitrators;
 - the provisions of Chapter 12 of the Swiss CPIL; and
 - the parties' own procedural rules or the institutional rules to which the parties refer in their arbitration agreement and to which the arbitrators have agreed when accepting their nomination.
- 4.4.2 The arbitrators must ensure equal treatment of the parties and respect the right of both parties to be heard in adversarial proceedings.³⁶

³² Swiss CPIL, art 180(2).

³³ Swiss Federal Supreme Court, 13 August 1996, BGE 122 I 370 and 3 July 2002, BGE 128 III 330.

³⁴ Swiss Federal Supreme Court, 18 August 1992, BGE 118 II 361.

³⁵ Swiss Federal Supreme Court, 3 July 2002, BGE 128 III 332 and 18 August 1992, 118 II 361.

³⁶ Swiss CPIL, art 182(3). See also paragraph 6.2.2 below.

4.4.3 The core duty of the arbitrators is the execution of their function as arbitrators. This duty lasts until the conclusion of the arbitral proceedings, unless a situation occurs which entails an early termination of the *receptum arbitrii*. An arbitrator may only resign for valid reasons. However, in the event an arbitrator is unwilling to continue to execute his/her function, there are no effective means to force him/her to do so. Additionally, the parties must not be left with a truncated arbitral tribunal. Accordingly, and unless the parties have agreed to the contrary, an arbitrator declaring his/her resignation has to be replaced through the application of the provisions in Article 179(2) of the Swiss CPIL and Article 371 of the CPC, whether or not one considers the unilateral resignation to be valid.³⁷ By contrast, the Swiss Federal Supreme Court does not require the replacement of an arbitrator who does not participate in the deliberations without terminating his/her mandate.³⁸

4.5 Arbitration fees

4.5.1 Chapter 12 of the Swiss CPIL does not address the arbitrators' fees and expenses. The advance and final allocation of fees and expenses is, therefore, subject to the parties' discretion in the context of their arbitration agreement. If the arbitration is conducted under the rules of an arbitral institution, such rules will generally make detailed provision in relation to the arbitrators' (and the institution's) fees and expenses.

4.5.2 The Swiss Federal Supreme Court held in a recent decision that the power of the arbitral tribunal to issue an authoritative award does not extend to the arbitrators' fees and other issues arising out of the contract between the arbitrators and the parties (*receptum arbitri*). The agreement to arbitrate does encompass the *receptum arbitri* and the arbitrators cannot authoritatively decide in their own favour. Accordingly, any arbitrators' fees stated in the award are not authoritative, but are merely an invoice which the arbitrators issue based on the *receptum arbitri*. Where a party disagrees with the calculation of such fees, this issue has to be submitted to the competent state court.³⁹

4.5.3 Parties and the arbitrators may submit their *receptum arbitri* to arbitration; i.e. to agree that any dispute between them arising out of the *receptum arbitri* shall be decided by a different arbitral tribunal.

4.6 Immunity of arbitrators

4.6.1 There is no provision in Chapter 12 of the Swiss CPIL which would exempt arbitrators from liability claims by the parties. Therefore, an arbitrator's liability for

³⁷ Swiss Federal Supreme Court, 30 April 1991, BGE 117 Ia 166 c 6.

³⁸ Swiss Federal Supreme Court, 1 February 2002, BGE 128 III 234 c 3.

³⁹ Swiss Federal Supreme Court, 10 November 2010, BGE 136 III 597.

wrongful performance of his/her duties must be determined in accordance with the general legal rules governing liability under Swiss law. Article 97 of the Swiss Code of Obligations stipulates the principle that a party to a contract owes damage compensation if he/she does not duly perform the duties under the contract unless he/she can prove that no fault is attributable to him/her.

- 4.6.2 Institutional rules do however often limit arbitrators' liability. Such limitations are valid, with the exception of limitations relating to liability for gross negligence or unlawful intent. In these cases liability cannot be validly excluded.

5. Jurisdiction of the arbitral tribunal

5.1 Competence to rule on jurisdiction

- 5.1.1 Article 186(1) of the Swiss CPIL provides that the arbitral tribunal is authorised to decide whether it has jurisdiction over the matters brought before it. The arbitral tribunal will decide on its jurisdiction even if there are pending proceedings in existence on the same matter before a state court or another arbitral tribunal, unless there is a strong reason to stay the arbitral proceedings.⁴⁰ For example, an arbitral tribunal might be inclined to stay the arbitral proceedings in the event that in the already pending procedure, the respondent did not contest the jurisdiction of the court.

- 5.1.2 A party's objection to lack of jurisdiction must be raised prior to any defence on the merits.⁴¹ A party may concurrently contest jurisdiction and, subject to those objections, present its first defence on the merits. Generally, the arbitral tribunal will render its decision on jurisdiction in the form of a preliminary award.⁴²

5.2 Power to order interim measures

- 5.2.1 Unless the parties have agreed otherwise, upon the request of a party, the arbitral tribunal is empowered to order interim or protective measures.⁴³
- 5.2.2 The arbitral tribunal is not entitled to impose sanctions in the event that any interim or protective measures are not complied with. For this reason, if the party concerned does not comply voluntarily with the preliminary or protective measure

⁴⁰ Swiss CPIL, art 186 (1 *bis*).

⁴¹ *Ibid*, art 186(2).

⁴² *Ibid*, art 186(3).

⁴³ *Ibid*, art 183(1).

ordered, the arbitral tribunal may request the assistance of the judge at the place where the interim measure shall be enforced. The judge will apply his/her own law in order to enforce such measures.⁴⁴

- 5.2.3 Both the arbitral tribunal and the judge may grant interim or protective measures conditional upon the provision of appropriate security.⁴⁵

6. Conduct of arbitral proceedings

6.1 Commencement of arbitration

- 6.1.1 Arbitral proceedings are pending as soon as one party submits its claim to the arbitral tribunal designated in the arbitration agreement or, if the arbitration agreement does not designate a particular arbitrator, as soon as one party initiates the procedure to appoint the arbitral tribunal.⁴⁶

6.2 General procedural principles

- 6.2.1 Under Swiss law, parties have significant autonomy to choose and determine the arbitral procedure and to tailor the procedural rules to their specific needs. Accordingly, Chapter 12 of the Swiss CPIL does not contain specific or detailed (default) rules regarding arbitral procedures. Article 182(1) of the Swiss CPIL states that the parties may:

- create their own arbitral procedure;
- refer to existing institutional rules of arbitration such as the Swiss Rules,⁴⁷ the ICC Arbitration Rules⁴⁸ or the UNCITRAL Arbitration Rules (1976);⁴⁹ or
- select a pre-existing body of procedural law, for example the CPC.

- 6.2.2 Despite the extensive autonomy of the parties with regard to procedural issues, the minimum requirements of Article 182(3) of the Swiss CIPL have to be observed.⁵⁰ The arbitral tribunal must therefore:

- ensure equal treatment of the parties; and
- respect the rights of both parties to be heard in adversarial proceedings.

⁴⁴ *Ibid.*, art 183(2).

⁴⁵ *Ibid.*, art 183(3).

⁴⁶ *Ibid.*, art 181.

⁴⁷ CMS Guide to Arbitration, vol II, appendix 3.15.

⁴⁸ *Ibid.*, appendix 3.7.

⁴⁹ *Ibid.*, appendix 3.1.

⁵⁰ Swiss Federal Supreme Court, 7 September 1993, BGE 119 II 388.

- 6.2.3 If these minimum requirements are not met, the final award may be challenged before the Swiss Federal Supreme Court.⁵¹
- 6.2.4 Where the parties have failed to set forth the applicable arbitral procedure, the arbitral tribunal is free to determine the procedure, either directly or by reference to a body of law or existing arbitration rules.⁵²
- 6.2.5 The arbitral tribunal will often consult with the parties at a very early stage of the arbitral proceedings in order to agree on the procedural framework of the arbitral proceedings.

6.3 Seat, place of hearings and language of arbitration

- 6.3.1 In order to become subject to Swiss law,⁵³ the arbitral tribunal must have its official seat of arbitration in Switzerland.⁵⁴ This does not prevent the parties from actually holding any part of the arbitral proceedings elsewhere.
- 6.3.2 In their arbitration agreement, the parties can choose the language of the arbitration. If the parties have not agreed upon the language, the arbitral tribunal will decide which language to apply to the proceedings.

6.4 Multi-party issues (intervention and joinder)

- 6.4.1 Where a third party is caused, either by the claimant or the respondent, to participate in the arbitration through a third-party notice, where a third party actively brings an intervention claim, or where arbitral proceedings between (partially) different parties are consolidated, the two-party arbitration converts into multi-party arbitration.

Third-party notice and third-party intervention

- 6.4.2 Unlike Chapter 12 of the Swiss CPIL, some institutional rules address the issues of third-party notice and third-party intervention. For example, the Swiss Rules⁵⁵ provide that where one or more third persons request to participate in arbitral proceedings already pending under the Swiss Rules, or where a party to arbitral proceedings under the Swiss Rules requests to cause one or more third persons to

⁵¹ Swiss CPIL, art 190(2) (d).

⁵² *Ibid*, art 182(2).

⁵³ *Ibid*, arts 176–194.

⁵⁴ *Ibid*, art 176(1).

⁵⁵ Swiss Rules, art 4(2). See CMS Guide to Arbitration, vol II, appendix 3.15.

participate in the arbitration, the arbitral tribunal shall decide on such request, after consulting with all parties, including the person or persons to be joined, taking into account all relevant circumstances.

- 6.4.3 In the event of a third-party notice, the notified party cannot be forced to participate in the arbitration unless it is provided with the same rights regarding the appointment of the arbitral tribunal as the original parties to that arbitration.
- 6.4.4 Where a third party actively brings an intervention claim, as a general rule, such intervention should only be admitted by the arbitral tribunal if, in addition to any other requirements, the intervening party is willing to accept the co-arbitrator already appointed by the supported party as their jointly designated co-arbitrator.

Consolidation of two arbitral proceedings

- 6.4.5 Chapter 12 of the Swiss CPIL is silent on the consolidation of two arbitral proceedings. The Swiss Rules provide that if another arbitration is already pending under the Swiss Rules, the institution may decide that the new case shall be consolidated into the pending arbitral proceedings even if the parties to the new procedure are not (fully) identical to the parties of the existing arbitral proceedings.⁵⁶ In this case, the parties to all proceedings shall be deemed to have waived their right to designate an arbitrator, and the institution may revoke the appointment and confirmation of arbitrators and apply the provisions of the Swiss Rules regarding the composition of the arbitral tribunal. While, prior to its decision, the institution shall consult with the parties and any arbitrator already confirmed, their consent is not required. The institution shall take into account all relevant circumstances, including the links between the two cases and the progress already made in the pending arbitral proceedings.

6.5 Oral hearings and written proceedings

- 6.5.1 As discussed at paragraph 6.2.1 above, Swiss law grants the parties autonomy to choose and determine the arbitral procedure according to their specific needs. Hence, Chapter 12 of the Swiss CPIL does not contain detailed (default) rules regarding the arbitral procedure. It is for the parties, and subsequently for the arbitrators, to decide whether the arbitral procedure should encompass an oral hearing and/or to what extent the procedure should be in writing. However, the procedure still has to comply with the minimum requirements of Article 182(3) of the Swiss CIPL (i.e. the arbitral tribunal must ensure the equal treatment of the parties and respect the rights of both parties to be heard in adversarial proceedings).

⁵⁶ Swiss Rules, art 4(1). See CMS Guide to Arbitration, vol II, appendix 3.15.

6.6 Default by one of the parties

6.6.1 In the event that the respondent does not participate in the appointment of a sole arbitrator, or if it does not nominate its co-arbitrator, the agreement of the parties and/or the institutional rules to which the parties refer will govern the arbitral procedure. Institutional rules such as the Swiss Rules provide that the institution will appoint the sole arbitrator or the co-arbitrator that has not been nominated by respondent. If the parties' agreement to arbitrate does not provide any guidance, the claimant can seek the assistance of the state court at the seat of arbitration. The judge will then appoint the sole arbitrator or the co-arbitrator that the respondent failed to nominate.⁵⁷

6.6.2 Unless agreed otherwise by the parties, the arbitral tribunal, once constituted, will move ahead with the arbitration irrespective of the default of a party during the arbitral proceedings. It will depend on the agreement between the parties and subsequently on the decision of the arbitral tribunal whether the default of a party has certain consequences, e.g. whether a default by the claimant results in the termination of the procedure and/or whether the facts presented by one party are deemed to be true if the other side defaults. In order to prevent an assertion that the right to be heard was not respected, it is crucial that the arbitral tribunal keeps the defaulting party updated on subsequent steps in the arbitration.

6.7 Evidence

6.7.1 Article 184 of the Swiss CPIL gives the arbitral tribunal power to take its own evidence. Subject to rules set forth or referred to by the parties in the arbitration agreement, the arbitral tribunal will determine the evidentiary procedure.

6.7.2 Where legal assistance by a state court is necessary (for example, if a witness refuses to appear voluntarily before the arbitral tribunal), the arbitral tribunal may request the assistance of the judge at the seat of arbitration. The judge will then apply Swiss law.

6.8 Appointment of experts

6.8.1 On the request of a party or on its own motion, the arbitral tribunal may appoint its own tribunal-appointed expert. In arbitral proceedings, parties often present their own experts. In the event of contradicting expert opinions of the parties, the arbitral tribunal might decide to appoint a tribunal-appointed expert.

⁵⁷ Swiss CPIL, art 179, para 2 and CPC, art 362(1).

6.9 Confidentiality

- 6.9.1 Privacy and confidentiality of the arbitral proceedings and of the subsequent award is often a decisive factor for parties to agree on arbitration.
- 6.9.2 However, Chapter 12 of the Swiss CPIL does not provide for a duty of confidentiality. Hence, it will be for the parties to agree on the desired level of confidentiality. Such agreement can be implicit or explicit. In order to avoid uncertainty at a later stage, the parties should expressly agree that the arbitral proceedings and the award shall be confidential, either by including a provision in their arbitration agreement or by referring to institutional rules which include a confidentiality provision, e.g. the Swiss Rules.
- 6.9.3 The Swiss Rules state that, subject to a written agreement to the contrary, the parties undertake to keep confidential all awards and orders as well as all materials submitted by another party in the arbitral proceedings, unless a disclosure is necessary:
- (i) due to the legal duties of a party;
 - (ii) in order to protect or pursue a legal right; or
 - (iii) in order to enforce or challenge an award in legal proceedings before a judicial authority.⁵⁸

7. Making of the award and termination of proceedings

7.1 Choice of law

- 7.1.1 The substantive law to be applied by the arbitral tribunal when assessing the merits of the case may be freely determined by the parties. In the absence of a choice of law by the parties, the arbitral tribunal will apply the law most closely connected with the subject matter of the dispute.⁵⁹ The arbitral tribunal does not have to apply a specific set of conflict of laws rules, but it may apply an independent “closest connection” test in order to determine the applicable law. Yet in practice, the (abstract) applicable law as such is often less important than the provisions and the interpretation of the contract between the parties.
- 7.1.2 The parties may authorise the arbitral tribunal to base its decision purely on equitable considerations, i.e. to decide *ex aequo et bono*.⁶⁰

⁵⁸ Swiss Rules, art 44. See CMS Guide to Arbitration, vol II, appendix 3.15.

⁵⁹ Swiss CPIL, art 187(1).

⁶⁰ *Ibid*, art 187(2).

7.2 Timing, form, content and notification of award

- 7.2.1 The award has to be rendered in conformity with the rules of procedure agreed upon by the parties.⁶¹ This provision again reflects the overriding importance of party autonomy provided for by Chapter 12 of the Swiss CPIL. In the absence of an agreement between the parties, the award will be made by a majority of the arbitrators or, in default of a majority, by the chair alone.⁶²
- 7.2.2 The parties may freely determine the form of the award. Unless agreed otherwise, the award must be in writing, accompanied by reasons for the decision, dated and signed. The signature of the chair of the arbitral tribunal is sufficient.⁶³ The award must be notified to the parties.⁶⁴
- 7.2.3 Unless agreed otherwise between the parties, the arbitral tribunal may also render partial awards.⁶⁵

7.3 Settlement

- 7.3.1 The parties may settle their dispute at any time. Upon their request, the arbitral tribunal may record the settlement in the form of a consent award.

7.4 Power to award interest and costs

- 7.4.1 To the extent sought by the claimant, the arbitral tribunal has the power to award contractual and/or default interest on the claimed amounts.
- 7.4.2 Chapter 12 of the Swiss CPIL does not contain any provisions as to the award and allocation of the costs arising from the arbitration between the parties. It is left to the parties to determine compensation and allocation of costs in their arbitration agreement, or to refer to institutional rules containing such provisions.
- 7.4.3 Where an arbitration agreement does not deal with the award and/or allocation of the costs of the arbitration, the arbitrators will decide on these issues. However, their decision must not be contrary to the outcome of the arbitration. In a recent case, the Swiss Federal Supreme Court voided an award in which the claimant had been unsuccessful for the most part of its claim, but despite this, the respondent was ordered to bear all costs of the arbitration and to fully compensate the claimant.⁶⁶

⁶¹ *Ibid*, art 189(1).

⁶² *Ibid*, art 189(2).

⁶³ *Ibid*, art 189.

⁶⁴ *Ibid*, art 190(1).

⁶⁵ *Ibid*, art 188.

⁶⁶ Swiss Federal Supreme Court, 4 September 2008, case no. 4A_288/2008, c 4 (unpublished).

7.4.4 As to the costs of the arbitral tribunal, the Swiss Federal Supreme Court has held in a recent decision that the arbitrators can only issue an authoritative award on the allocation of the costs among the parties, but not as to the amount of the fees owed to the arbitrators.⁶⁷

7.5 Termination of proceedings

7.5.1 Proceedings terminate upon notification of the final award to the parties.⁶⁸

7.6 Effect of the award

7.6.1 Upon its due notification to the parties, the award becomes final.⁶⁹ An action for annulment of the award before the Swiss Federal Supreme Court does not affect the enforceability of the award, unless the Swiss Federal Supreme Court grants a motion to suspend enforcement of the award, which is fairly rare.

7.7 Correction, clarification and issue of a supplemental award

7.7.1 While Chapter 12 of the Swiss CPIL is silent on this issue, the Swiss Federal Supreme Court has affirmed that the correction or clarification of an award, as well as the issue of a supplemental award, is admissible in appropriate circumstances as a matter of general legal principle and established doctrine.⁷⁰

7.7.2 The Swiss Federal Supreme Court has also acknowledged the availability of the remedy of “revision” of an award if a party discovers important facts which could have been brought before the arbitral tribunal, but were not known to such party, despite all due diligence at the time. The revision proceedings must be initiated before the Swiss Federal Supreme Court within 30 days of discovering the facts. The Swiss Federal Supreme Court will examine whether the new facts would have led to a different decision of the arbitral tribunal and, if so, refer the case back to the arbitral tribunal to reconsider the award.⁷¹

8. Role of the courts

8.1 Jurisdiction of the courts

8.1.1 Pursuant to Article 7 of the Swiss CPIL, a Swiss court will refuse to exercise jurisdiction over a particular dispute if the subject matter of the dispute is arbitrable and if the parties have concluded an arbitration agreement, unless:

⁶⁷ Swiss Federal Supreme Court, 10 November 2010, BGE 136 III 597; see paragraph 4.5.2 above.

⁶⁸ Swiss CPIL, art 190(1).

⁶⁹ *Ibid*, art 190(1).

⁷⁰ Swiss Federal Supreme Court, 2 November 2000, BGE 126 III 527 and 7 January 2011, BGE 137 III 85.

⁷¹ Swiss Federal Supreme Court, 14 March 2008, 134 III 286; 1 November 1996, BGE 122 III 492 and 11 March 1992, BGE 118 II 204.

- the respondent has implicitly accepted the jurisdiction of the court by participating in the court proceedings without raising any objection;
- the court determines that the arbitration agreement is *prima facie* null and void,⁷² inoperative or incapable of being performed; or
- the arbitral tribunal cannot be constituted for reasons which are obviously attributable to the respondent's behaviour in the arbitral proceedings.

8.2 Stay of court proceedings

- 8.2.1 According to the doctrine, in cases where arbitral proceedings have been initiated prior to court proceedings, the court should stay its proceedings until the arbitral tribunal has decided on its jurisdiction.⁷³ Once the arbitral tribunal has confirmed its jurisdiction, the court should dismiss the claim.

8.3 Preliminary rulings on points of jurisdiction

- 8.3.1 Lack of jurisdiction must be asserted at the very beginning of the proceedings. The arbitral tribunal is competent to decide for itself whether it has jurisdiction over the matters brought before it (*competence-competence*). In general, the arbitral tribunal will render its decision on jurisdiction in the form of a preliminary award.⁷⁴ The arbitral tribunal will decide on its jurisdiction notwithstanding any existing pending proceedings on the same matter before a state court or another arbitral tribunal, unless there is a strong reason to stay the arbitral proceedings.⁷⁵
- 8.3.2 The arbitral tribunal's preliminary award on jurisdiction can be challenged directly before the Swiss Federal Supreme Court, which will review *de novo* whether the arbitral tribunal has properly accepted or declined jurisdiction over the matters in dispute.⁷⁶ In case the arbitral tribunal decides on its jurisdiction by interim award, only such interim award on jurisdiction, and not the final decision, may be challenged on the ground that the arbitral tribunal lacks jurisdiction.⁷⁷
- 8.3.3 According to the Swiss Federal Supreme Court, even if the arbitral tribunal issues an interim or partial award without specifically addressing the question of jurisdiction, a party that has made a timely challenge to the arbitral tribunal's jurisdiction is requested to file its challenge against such first preliminary ruling and

⁷² Swiss Federal Supreme Court, 29 April 1996, BGE 122 III 143.

⁷³ W Wenger/M Schott, *Berne Commentary to the Swiss CIPIL* (2nd ed, 2007), art 186 para 16; M Sogo in I Meier, *Schweizerisches Zivilprozessrecht* (2010), pp 608–609, fn 1173.

⁷⁴ Swiss CIPIL, art 186(1) and (3).

⁷⁵ *Ibid*, art 186 (1 *bis*).

⁷⁶ *Ibid*, art 190(2) (b).

⁷⁷ Swiss Federal Supreme Court, 23 June 1992, BGE 118 II 355 and 18 September 2003, BGE 130 III 76.

must not wait for the final award. The Swiss Federal Supreme Court has found that by filing a preliminary or partial decision, the arbitral tribunal implicitly affirms its jurisdiction.⁷⁸

8.4 Interim protective measures

- 8.4.1 As long as the arbitral tribunal is not constituted, an application for interim measures may be filed with the state court. There is no unanimous opinion as to whether there is still alternative jurisdiction of the competent state court after constitution of the arbitral tribunal. According to one opinion supported by certain Swiss scholars, the state courts and arbitral tribunal have alternative jurisdiction, unless the parties have explicitly agreed to the contrary.⁷⁹
- 8.4.2 Where the arbitral tribunal orders injunctive relief, but the party concerned does not voluntarily comply with such an interim measure, the arbitral tribunal may request the assistance of the competent state court, which will apply its own procedural law.⁸⁰
- 8.4.3 Both the arbitral tribunal and the state court may make the granting of interim or protective measures conditional upon provision of appropriate security.⁸¹

8.5 Obtaining evidence and other court assistance

- 8.5.1 If court assistance is necessary with respect to the taking of evidence in connection with arbitral proceedings, the arbitral tribunal, or a party with the consent of the arbitral tribunal, may ask the state court at the place of the arbitration for assistance. The state court will apply its own procedural law.⁸² The arbitral tribunal may also ask the state court to issue letters of request to the judicial authorities of other countries according to international conventions, in particular the Hague Convention on Taking Evidence Abroad of 1970.
- 8.5.2 The judge at the seat of arbitration also has jurisdiction when further assistance from judicial or administrative bodies is necessary.⁸³

⁷⁸ Swiss Federal Supreme Court, 18 September 2003, BGE 130 III 80, and 17 February 2000, case No. 4P 168/1999 (unpublished).

⁷⁹ B Berger/F Kellerhals, *Internationale und interne Schiedsgerichtsbarkeit in der Schweiz* (2006), para 1167; S Berti, *Berne Commentary to the Swiss CIPL* (2nd ed, 2007), art 183 para 5; F Vischer, *Zurich Commentary to the Swiss CIPL* (2nd ed, 2004), art 183 para 3.

⁸⁰ Swiss CPIL, art 183(2).

⁸¹ *Ibid*, art 183(3).

⁸² *Ibid*, art 184.

⁸³ *Ibid*, art 185.

9. Challenging the arbitral award before the courts

9.1 Overview

9.1.1 The rules of Chapter 12 of the Swiss CPIL on challenging awards are precisely tailored to the requirements of the international business community:

- the Swiss Federal Supreme Court is designated as the only judicial authority competent to hear actions for the annulment of awards.⁸⁴ The procedure before the Swiss Federal Supreme Court has proven to be very quick. In most cases, the final decision of the Swiss Federal Supreme Court is issued no later than three to six months after the filing of the appeal;
- the grounds for annulment are very restrictive.⁸⁵ Even with regard to these limited grounds for annulment, case law shows that the Swiss Federal Supreme Court is extremely reluctant to quash awards and the rate of success of appeals filed with the Swiss Federal Supreme Court is low;⁸⁶ and
- if all of the parties are not resident in Switzerland, it is possible to waive the right to bring any action for annulment of the award with the Swiss Federal Supreme Court.⁸⁷

9.2 Jurisdiction

9.2.1 The action for annulment of an award has to be brought before the Swiss Federal Supreme Court in the form of an appeal.⁸⁸ The appeal must be presented to the Federal Supreme Court within 30 days after service of the award.⁸⁹

9.3 The appeal

9.3.1 Chapter 12 of the Swiss CPIL contains significant limitations on the possibility of challenging an award before the Swiss Federal Supreme Court. Article 190(2)(a)–(e) of the Swiss CPIL provides that an award can only be challenged based on the following five grounds:

- (i) improper appointment of the sole arbitrator or improper constitution of the arbitral tribunal (including the appointment of an arbitrator who is not independent);⁹⁰

⁸⁴ *Ibid*, art 191.

⁸⁵ Swiss CPIL, art 190(2).

⁸⁶ P Lalive, “L’article 190 al 2 LDIP a-t-il une utilité?”, *ASA Bulletin* (4/2010), pp. 726–734; F Dasser, “International arbitration and setting aside proceedings in Switzerland – An updated statistical analysis”, *ASA Bulletin* (1/2010), p. 88.

⁸⁷ Swiss CPIL, art 192.

⁸⁸ Swiss CPIL, art 191 in connection with the Swiss Federal Statute on the Swiss Federal Supreme Court (**BGG**), art 77.

⁸⁹ BGG, art 100(1).

⁹⁰ Swiss Federal Supreme Court, 18 August 1992, BGE 118 II 361.

- (ii) erroneous acceptance or denial of jurisdiction by the arbitral tribunal;
- (iii) failure to decide all claims brought by the parties or decisions on matters beyond the claims submitted to the arbitral tribunal;
- (iv) violation of the principle of equal treatment of the parties or the right to be heard; or
- (v) non-compliance of the award with substantive or procedural public policy.⁹¹

9.3.2 The fact that the award may be arbitrary does not qualify as a reason for annulment under Article 190 of the Swiss CPIL.⁹²

9.3.3 With regard to the grounds mentioned in Article 190(2)(a) and (b) of the Swiss CPIL (i.e. constitution and jurisdiction of the arbitral tribunal), an interim or partial award can be submitted to the Swiss Federal Supreme Court.⁹³ As explained above, the parties must not await the final decision before filing their appeal.⁹⁴ In contrast, with regard to the grounds mentioned in Article 190(2)(c), (d) and (e) of Swiss CPIL, only the final award can be challenged. This is even the case where an interim or partial decision causes a disadvantageous and not easily reparable situation for a party to the arbitral proceedings.⁹⁵

9.3.4 If the challenge is well-founded, the Swiss Federal Supreme Court may issue a new decision replacing the award, but only if the arbitral tribunal erroneously denied or affirmed jurisdiction.⁹⁶ In all other cases, the Swiss Federal Supreme Court will remit the matters in question to the arbitral tribunal for reconsideration.⁹⁷

9.4 Exclusion of appeal

9.4.1 According to Article 192 of Swiss CPIL, the parties may either waive the right to have the award set aside, or they may limit this right to one or several of the five aforementioned grounds for annulment, provided that two requirements are met:

- (i) none of the parties has its domicile, habitual residence or business establishment in Switzerland; and

⁹¹ Swiss Federal Supreme Court, 13 April 2010, 136 III 345. This is the only case in which the Swiss Federal Supreme Court affirmed a violation of public order. The arbitral tribunal had ignored that the case at hand had been decided before and thereby violated the fundamental principle of *res judicata*.

⁹² Swiss Federal Supreme Court, 25 April 1995, BGE 121 III 333.

⁹³ Swiss CPIL, art 190(3).

⁹⁴ Swiss Federal Supreme Court, 23 June 1992, BGE 118 II 355 and 18 September 2003, 130 III 76.

⁹⁵ Swiss Federal Supreme Court, 18 September 2003, BGE 130 III 76.

⁹⁶ Swiss CPIL, art 190(2) (b).

⁹⁷ Swiss Federal Supreme Court, 9 April 1991, BGE 117 II 94.

- (ii) the waiver is expressly mentioned in the arbitration agreement or is contained in a subsequent written agreement. Due to the requirement for an “express term”, the mere reference to a set of procedural rules excluding the right of appeal would probably not be sufficient. However, an explicit reference to Article 192 of the Swiss CPIL is not necessary. The Swiss Federal Supreme Court has held that the right to challenge was validly waived by an arbitration agreement in which the parties referred to the UNCITRAL Arbitration Rules (1976)⁹⁸ and added that the decision of the arbitral tribunal “shall be final and binding on the parties who exclude all and any rights of appeal from all and any awards insofar as such exclusion can validly be made”.⁹⁹

9.4.2 While, under the conditions mentioned above, the parties can exclude all grounds for annulment in Switzerland as the state of origin of the award, such award remains subject to judicial review according to Articles IV and V of the New York Convention¹⁰⁰ in the countries in which the award is being enforced. In the event that the parties validly exclude an appeal and later seek enforcement of the award in Switzerland, such enforcement procedure is also governed by the New York Convention.¹⁰¹ This ensures that, irrespective of the country, there will be a review by the court enforcing the award in accordance with Articles IV and V of the New York Convention.¹⁰²

10. Recognition and enforcement of awards

10.1 Domestic awards

10.1.1 Each party may, at its own expense, deposit a copy of the award with the state court at the seat of arbitration. Upon request by a party, the state court will issue a declaration as to its enforceability. Alternatively, at the request of a party, the arbitral tribunal will certify that the award was made in accordance with the provisions of Chapter 12 of the Swiss CPIL. Such a certificate has the same effect as depositing the award with the state court.¹⁰³

⁹⁸ CMS Guide to Arbitration, vol II, appendix 3.1.

⁹⁹ Swiss Federal Supreme Court, 4 February 2005, BGE 131 III 173.

¹⁰⁰ CMS Guide to Arbitration, vol II, appendix 1.1.

¹⁰¹ Swiss CPIL, art 192(2). For the New York Convention see CMS Guide to Arbitration, vol II, appendix 1.1.

¹⁰² CMS Guide to Arbitration, vol II, appendix 1.1.

¹⁰³ Swiss CPIL, art 193.

10.1.2 Subject to the aforementioned Article 192(2) of the Swiss CPIL, any award issued by an arbitral tribunal having its seat of arbitration in Switzerland will be enforceable anywhere in Switzerland.¹⁰⁴

10.2 Foreign awards

10.2.1 Pursuant to Article 194 of the Swiss CPIL, the New York Convention¹⁰⁵ governs the recognition and enforcement of all foreign awards in Switzerland. By including an express reference to the New York Convention in Article 194 of the Swiss CPIL, the Swiss legislature broadened the applicability of the New York Convention unilaterally, in that it now applies regardless of whether the country of origin of the award is a signatory of the New York Convention. Any and all foreign awards will therefore be recognised and enforced in Switzerland pursuant to the provisions of the New York Convention.

10.2.2 If a foreign state court exercises jurisdiction over a particular dispute despite the existence of a valid arbitration agreement in accordance with Article II of the New York Convention, the foreign state court's decision will not be recognised in Switzerland.¹⁰⁶

11. Conclusion

11.1.1 With Chapter 12 of the Swiss CPIL and with the Swiss Rules as modern institutional rules, Switzerland affirms its position as a leading location for international commercial arbitration.

11.1.2 Switzerland's arbitration law, combined with its neutrality, political stability, geographical position, arbitral institutions and the expertise of its legal profession make the country uniquely suitable for resolving international arbitration disputes.

¹⁰⁴ Swiss Constitution, art 122(3).

¹⁰⁵ CMS Guide to Arbitration, vol II, appendix 1.1.

¹⁰⁶ Swiss CPIL, art 25(a); Swiss Federal Supreme Court, 19 December 1997, BGE 124 III 83.

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