

Arbitration in Switzerland — High-Quality and Efficient Resolution of Business Disputes



James MENZ
is counsel with
Schellenberg Wittmer Ltd.,
Switzerland



Anna V. KOZMENKO
is an associate with
Schellenberg Wittmer Ltd.,
Switzerland

Switzerland has long been associated with neutrality, stability, and high standards of quality. Located in the heart of Europe, Switzerland is a multilingual and multicultural country and hosts numerous international organizations.

Building on a long tradition dating back to 1872,¹ Switzerland continues to be one of the leading venues for international commercial arbitration, attracting parties from all over the world, including Ukraine. According to International Chamber of Commerce (ICC) data, since 2000 Switzerland has consistently been ranked first or second among the venues for ICC arbitration proceedings worldwide.² A survey of the CIS legal market revealed that Switzerland and Swiss law are among the top choices of CIS and Ukrainian parties for the seat of arbitration and applicable law, respectively.³

Switzerland's attractiveness can be explained by logistical factors and its favorable legal framework for arbitration.

Logistical factors

Switzerland is located in the center of Europe and can be conveniently reached by plane, train, or car from

Switzerland is home to a large community of practitioners with unparalleled expertise in international arbitration

Eastern Europe. There are daily direct and inexpensive flights from Kiev to either Zurich or Geneva that take less than three hours. The train stations in all Swiss cities are centrally located and international airports in both Zurich and Geneva can be easily reached within 15 minutes from the center of the cities. The time difference between Ukraine and Switzerland is only one hour. Zurich and Geneva offer a modern, well-developed infrastructure. Many hotels in Zurich and Geneva have a long tradition of hosting arbitrations.

To help parties handle hearings logistics, the Swiss Arbitration Association recently began offering a convenient online service called the Swiss Arbitration Hub.⁴ It allows parties to browse and book online hearing facilities, select interpreters and court reporters, as well as to order additional services related to transportation or special audiovisual needs.

Switzerland is home to a large community of practitioners with unparalleled expertise in international arbitration. The Swiss Arbitration Association offers an online service that helps parties to search for a counselor or an arbitrator according to specific criteria.⁵

Swiss lawyers regularly serve as arbitrators themselves, which gives them additional insight into effective advocacy before arbitral tribunals. Swiss lawyers are multicultural and multilingual, and the leading arbitration firms have over the past years significantly expanded their ranks of

foreign-trained attorneys. Swiss attorneys have significant experience working with Ukrainian clients due to the close business ties between the two countries that have evolved over the last 20 years. In addition, Switzerland is one of the few European jurisdictions in which the leading commercial law firms remain independent and the large Anglo-American firms do not dominate the market. Swiss law firms are known for efficient staffing and competitive hourly rates.

Legal framework for international arbitration in Switzerland

International arbitration in Switzerland is governed by Chapter 12 of the 1987 *Private International Law Act* (PILA) available online in several languages, including Russian.⁶ Chapter 12 PILA applies to all arbitrations seated in Switzerland if, at the time of the conclusion of the arbitration agreement, at least one of the parties had neither its domicile nor its habitual residence in Switzerland.⁷

Chapter 12 PILA has long been hailed for its simplicity and pragmatism. It contains only 19 articles and provides for one of the most arbitration-friendly regimes worldwide.⁸ The PILA leaves the design of the arbitration to the parties themselves, and foresees court intervention only as necessary to aid the arbitration. Swiss courts respect and enforce arbitration agreements and do not interfere with or otherwise disrupt arbitration proceedings.

¹ In the 1872 Alabama Claims arbitration, a tribunal seated in Geneva decided disputes between the governments of the United States and the United Kingdom arising out of the U.S. civil war.

² See ICC Statistical Reports for 2000-2013 available at <http://www.iccwbo.org> (last visited on 12 September 2014). In 2013, almost 16% of all cases administered by the ICC had a seat in Switzerland.

³ See Survey of the CIS legal services market in International Arbitration prepared by Legal Insight Magazine available at <http://www.arbitrations.ru/en/press-centr/news/cis-arbitration-users-preferences-seat-law-rules/> (last visited on 12 September 2014).

⁴ See <http://www.swissarbitrationhub.com/#/select-service> (last visited on 12 September 2014).

⁵ See <http://www.arbitration-ch.org/pages/en/find-counsel-arbitrator/index.html> (last visited on 12 September 2014).

⁶ See <http://www.arbitration-ch.org/pages/en/arbitration-in-switzerland/index.html> (last visited on 12 September 2014).

⁷ See Article 176(1) PILA.

⁸ The law is currently undergoing a revision which is expected to result in minor updates.

Under Swiss law, a final arbitral award generally is exactly that. Chapter 12 PILA contains only five grounds on which to challenge an award rendered in Switzerland.⁹ These include the violation of fundamental procedural rights and the incompatibility of an award with public policy, the threshold for which is very high. Only about 7.5% of all appeals have been successful.¹⁰ In addition, unlike in England, France, or Sweden, a challenge to an arbitral award can be brought only directly before the nation's highest court — the Federal Supreme Court — without any further appeal.¹¹ If none of the parties is based in Switzerland, the parties can even agree to bar any challenge. The proceedings are subject to strict deadlines, generally involve written submissions only, and usually take from six to eight months, thus avoiding costly and lengthy post-award litigation.¹²

Switzerland joined the New York Convention in 1958, and the enforcement of foreign arbitral awards in Switzerland is straightforward as matter of procedure and facilitated by a pro-enforcement attitude of Swiss courts. This may be particularly relevant for Ukrainian parties, given that important assets of some Ukrainian companies and individuals are located in Switzerland.

As a continental civil law jurisdiction, Switzerland's contract law and other legal principles are easily comprehensible to parties coming from other civil law jurisdictions, allowing for productive and efficient cooperation between Swiss and Ukrainian lawyers. Swiss law is frequently chosen as applicable substantive law in many international contracts because it is neutral, clear, and respects the actual intentions and reasonable

⁹ See Article 190 PILA.

¹⁰ See Challenges of Swiss Arbitral Awards — Selected Statistical data as of 2013 (research undertaken by Prof. Felix Dasser) available at <http://www.arbitration-ch.org/pages/en/asa/news-&-projects/details/974.challenges-of-swiss-arbitral-awards-%E2%80%93-selected-statistical-data-as-of-2013.html>.

¹¹ See Article 191 PILA.

¹² The Federal Supreme Court's decisions on challenges to international arbitral awards are generally published in German or French. A number of English-language translations and commentaries are available online. See Arbitration Case Digest prepared by Members of the International Arbitration Practice Group of Schellenberg Wittmer Ltd. and available at <http://www.swlegal.ch/Publications/Arbitration-Case-Digest.aspx>. See also Swiss International Arbitration Decisions available at swissarbitrationdecisions.com.

In addition to arbitration under various international rules like ICC, UNCITRAL and LCIA, there is also a genuine Swiss institutional arbitration option: the Swiss Rules of International Arbitration (Swiss Rules)

commercial expectations of the parties. Swiss law has been successfully tested in many contracts between parties from all over the world, particularly from the post-Soviet region.¹³

The choice of a seat of arbitration or a law governing the contract will often influence the parties' choice as to the nationality of the arbitrators. This can make a significant difference when it comes to the nature of the arbitration, especially on procedural matters like discovery. A Swiss international arbitral panel will tend to be more restrictive in ordering document production than a panel dominated by U.S. or English arbitrators. Disputes regarding document disclosure can contribute significantly to the duration and cost of arbitration.¹⁴

Swiss Rules

In addition to arbitration under various international rules like ICC, UNCITRAL and LCIA, there is also a genuine Swiss institutional arbitration option: the Swiss Rules of International Arbitration (Swiss Rules). Adopted in 2004 and updated in 2012, the Swiss Rules reflect international best practice and focus on efficient and cost-effective dispute resolution. The rules are available online in several languages, including Russian.¹⁵

Arbitrations under the Swiss Rules are administered by the Swiss Chambers Arbitration Institution (SCAI). The SCAI's Arbitration Court, which consists of experienced arbitration practitioners, decides on cer-

tain issues, as provided in the Rules. The Court's function is reasonably balanced and is aimed at facilitating and assuring a high quality of the proceedings, confirming arbitrators, monitoring the duration of the proceedings, and approving costs. It does not unduly control or intervene in the proceedings, and it does not scrutinize the awards.

If the parties so agree, the arbitral tribunal may take steps to facilitate the settlement of the dispute between the parties.¹⁶ This feature of the Swiss Rules allows parties to easily switch to the settlement stage and to reach a mutually beneficial resolution faster and at a lower cost. In addition, the Swiss Rules provide for the expedited resolution of disputes when the parties so agree.¹⁷ The expedited procedure provides that the award must be made within six months from the date on which the file was transmitted to the tribunal.

Disputes about oil, gas, coal, steel and other commodities are particularly relevant to Ukrainian parties, and Switzerland as a center of global commodity trading has recently seen an increase in international commodity arbitrations. In 2013, a new service called "ACT" was introduced, designed for commodity trading, shipping and trade finance companies to resolve their disputes efficiently. ACT provides for customized dispute resolution under the Swiss Rules and offers an optional and non-exhaustive list of specialized arbitrators and mediators.¹⁸

Conclusion

For years now Switzerland has remained a top choice for arbitration proceedings for parties from all over the world. This is mainly due to Switzerland's long-standing arbitration tradition, neutrality, and economic and political stability; arbitration-friendly and reliable legislation and courts; a large and diverse pool of practitioners with unparalleled expertise in international arbitration; and excellent geographic location and infrastructure. Its openness to parties coming from various backgrounds and its efficient approach make Switzerland an attractive destination for Ukrainian parties to resolve their disputes.

¹³ See also Survey of the CIS Legal Services Market in International Arbitration prepared by Legal Insight Magazine available at <http://www.arbitrations.ru/en/press-centr/news/cis-arbitration-users-preferences-seat-law-rules> (last visited on 12 September 2014). The Survey lists Swiss Law as a second top choice of applicable law in the contracts that involve parties from the CIS.

¹⁴ One study has found that the costs of civil law arbitration are only one third of those of common law arbitrations. M. Rushton, *Mind the Gap*, Legal Business Arbitration Report 2008, p. 16.

¹⁵ See <https://www.swissarbitration.org/sa/en/rules.php> (last visited on 12 September 2014). The administrative costs charged by the SCAI are calculated principally as a percentage of the amount in dispute in accordance with the schedule of costs contained in the Swiss Rules. The fees can be easily estimated online. See <https://www.swissarbitration.org/sa/en/costs.php>. When the amount in dispute is less than CHF 2 million, the administrative fee is waived.

¹⁶ Article 15(8) of the Swiss Rules.

¹⁷ Article 42 of the Swiss Rules.

¹⁸ See <http://www.ccig.ch/en-us/fourmird-esservices/arbitrage/act.aspx> (last visited on 12 September 2014).