Trends and Developments

Contributed by:
Diana Akikol, Rodolphe Gautier, Andrea Meier and Dieter Hofmann
Walder Wyss see p.29

Switzerland Cements Its Position as a Top-Five Seat of Arbitration

Switzerland is, without question, one of the world's leading arbitration hubs. Over 1,000 international arbitrations are estimated to be initiated in the country every year. A state-of-the-art legal framework, combined with the high quality and consistency of the judgments rendered by the Swiss Federal Supreme Court (the "Supreme Court"), which has exclusive jurisdiction to decide on challenges to Swiss awards, are likely to have contributed to Switzerland's success as an arbitration destination.

In the past decade, Switzerland has steadily ranked amongst the top three places of arbitration in ICC arbitrations. Recent data shows this trend to be unbroken. The 2020 ICC Dispute Resolution Statistics name Switzerland as the most preferred seat. Similarly, the 2021 International Arbitration Survey published by Queen Mary University of London includes Geneva amongst the five most sought-after seats, with Zurich just outside the leading ten, cementing Switzerland's prime ranking.

The popularity of the Swiss seat comes in combination with a marked preference of contracting parties for Swiss substantive law. Similar to other years, Swiss law was one of the three most frequently selected lex contractus in the ICC cases registered in 2019 and 2020. Moreover, for years, Swiss arbitrators have consistently been under the three most preferred nationalities of appointments or confirmations, which is a further testament to the trust placed by users and the ICC Court alike in the Swiss arbitration tradition.

In addition to its long-standing reputation for international commercial arbitration, Switzerland is by far the most important place for the resolution of sports-related disputes, due to an ever-increasing caseload of the Court of Arbitration for Sport in Lausanne (CAS). In 2020, CAS registered 948 new cases (by comparison, the ICC registered 929 cases under its Arbitration Rules in 2020).

The latest trend points towards an increasing importance of Switzerland as a place for investor-state disputes. This is confirmed by the Supreme Court's caseload, which in recent years has seen an increasing number of challenges to awards in investor-state disputes. This trend is expected to intensify in the coming years. With its political neutrality and stability, an excellent legal framework and the possibility to challenge any award directly before the country's highest judicial authority, Switzerland is ideally suited for this type of dispute.

A Modernised Swiss Arbitration Act Further Enhances the Attractiveness of the Swiss Lex Arbitri

The Swiss law of international arbitration – Chapter 12 of the Private International Law Act (PILA) – dates back to 1 January 1989 and has stood the test of time. Chapter 12 is appreciated as an innovative, clear and concise law that grants parties the greatest possible autonomy and flexibility in the constitution of the arbitral tribunal as well as in the conduct of the proceedings, whilst providing for minimum due process guarantees, which, if need be, will be enforced by a swift and well-functioning state court system.

After more than 30 years since its enactment, however, the time had come for a light touch-up of Chapter 12, which came into force on 1 January 2021. The updated law incorporates central elements of the Supreme Court's case law and clarifies open questions with a view to increasing legal certainty and clarity. The amended Chapter 12 further strengthens party autonomy by accepting arbitration clauses in unilateral legal instruments and ensuring the enforcement of arbitration agreements that fail to indicate a seat within Switzerland. Finally, Chapter 12's user-friendliness has been considerably improved. In particular, cross-references to other laws are now reduced to a minimum, so that Chapter 12 may serve to a large extent as a self-standing lex arbitri.

The following summary provides an overview of the most important changes, whilst also mentioning the key features that remain unchanged.

English submissions in proceedings before the Supreme Court

The most significant practical novelty brought by the revision is the possibility to file English-language legal submissions in annulment or revocation proceedings before the Supreme Court. Under the previous practice of the Supreme Court, it was already possible to produce exhibits in English with the consent of the other parties. By contrast, the legal submissions, as such, had to be filed in one of the national languages (German, French, Italian, Romansh). The revised law goes a step further by allowing the use of English in arbitration-related legal submissions, which will spare English-speaking parties the time and costs involved with translation work. These practical advantages are not to be underestimated in view of the short time limit for the filing of a challenge.

This innovation has no influence on the language of the proceedings and judgments; as before, these will be a national language. Moreover, in view of the many procedural pitfalls involved with annulment or revision proceedings in arbitration matters, it will remain advisable for applicants to instruct Swiss local counsel.

Scope of application

Switzerland has two arbitration acts: domestic cases are governed by Part 3 of the Civil Procedure Code (CPC) and Chapter 12 of the PILA applies to international proceedings (but the parties are free to opt out of the applicable lex arbitri in favour of the other). According to the revised Article 176(1) of the PILA, Chapter 12 applies to Swiss-seated arbitrations if "at least one of the parties to the arbitration agreement, at the time of its conclusion", was not based in Switzerland. This rule deviates from the previous case law principle according to which the situation of the parties to the proceedings was determinative. In the event of multiparty contracts involving parties from within and outside Switzerland, it therefore remained uncertain whether a future dispute would involve at least one non-Swiss party within the meaning of Article 176(1) of the PILA. With the new wording of this provision, the parties will have clarity on the applicable lex arbitri already when entering into their arbitration agreement.

Arbitration clauses in unilateral legal instruments

A new Article 178(4) of the PILA provides that the provisions of Chapter 12 shall apply by analogy to an arbitration clause set out in a unilateral legal act (eg, testament, deed of foundation or trust) or articles of association.

Modernised and uniform form requirements

Under the amended Article 178(1) of the PILA, an arbitration agreement shall be valid "if made in writing or in any other manner that can be evidenced by text". The previous, outdated references to exchanges by telegram, telex and

facsimile have been deleted. The shorter and modern wording is flexible enough to cover not only current means of communications (eg, emails) but also future new means that allow an agreement to be established by text.

As a further improvement in user-friendliness, the same requirement now applies to other agreements in the arbitration context that are subject to a specific form; ie, agreements to opt out of Chapter 12 and apply the CPC instead (Article 176(2) of the PILA) or an advance waiver of the right to the annulment or revision of an award (Article 192(1) of the PILA).

Constitution of the arbitral tribunal

The rules and procedures for the appointment, challenge, revocation and replacement of arbitrators are now exhaustively governed in Chapter 12 of the PILA; all previous references to corresponding provisions in the CPC have been repealed.

As before, Article 179(1) of the PILA is based on the primacy of party autonomy by providing that the arbitrators shall be appointed and replaced in accordance with the agreement of the parties. In practice, such agreement is often made by reference to (institutional or ad hoc) arbitration rules that govern the constitution of the tribunal, including the challenge and replacement of arbitrators, in an exhaustive manner.

In this context, a second sentence of Article 179(1) of the PILA now expressly states that, unless the parties have agreed otherwise, a three-member tribunal shall be appointed, whereby each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the presiding arbitrator. This rule is in line with the default solution provided by the Model Law. The same rule was already applicable where an arbitral tribunal was constituted with the assistance of the courts at the seat of the arbitration, by virtue of a reference to similar provisions in the CPC. By contrast, it was unclear whether it extended to cases in which the arbitrators were to be appointed or replaced without the involvement of the courts. By incorporating the rule in Article 179(1), the revised Chapter 12 answers this question in the affirmative.

Articles 179(2) to (5) of the PILA allows for the assistance of the courts (*juge d'appui*) in cases where the arbitrators cannot be appointed and replaced as agreed by the parties or foreseen by the default rule of Article 179(1). As before, the state courts at the seat have exclusive jurisdiction. However, the revised Article 179(2) introduces a novelty by providing for the jurisdiction of the state court first seized if the parties "have not designated a seat or have merely agreed that the seat of the arbitration shall be in Switzerland". Under the old law, a majority of authors considered such arbitration agreements ineffective where the parties to ad hoc proceedings had failed to agree on the constitution of the arbitral tribunal, as it was impossible to determine the courts having jurisdiction under Article 179(2) of the PILA. If the parties had merely agreed on arbitration, without any reference to Switzerland, Chapter 12 was not applicable in the first place, as it requires a Swiss seat (see Article 176(1) of the PILA).

The revised law sets out to strengthen party autonomy by ensuring that the consent to arbitration will prevail with the help of the Swiss courts even where the parties have not designated a Swiss city. With respect to agreements that merely provide for "arbitration", it remains to be seen whether the courts will require at least some prima facie indications that the parties intended to arbitrate in Switzerland. Alternatively, one may think of an interpretation providing for the jurisdiction of the Swiss courts (similar to the one granted to the *juge d'appui* under Article § 1505 Nr. 4 of the French Code of Civil Procedure)

whenever a party is exposed to a risk of denial of justice. However the provision is understood, it will be for the arbitral tribunal appointed with the assistance of the state court to determine its seat (see Article 176(3) of the PILA).

Article 179(5) of the PILA is inspired by the 1992 Dutco decision of the French Court of Cassation by allowing the competent Swiss state court to appoint all arbitrators in a multiparty setting (the same rule previously applied due to a reference to an identical CPC provision). The application of this rule is not mandatory; it will be for the appointing court to decide whether an appointment of all arbitrators by the court is warranted under the circumstances.

Article 179(6) of the PILA now expressly requires a potential or appointed arbitrator to disclose promptly any circumstances that may give rise to justifiable doubts as to their independence or impartiality. This rule incorporates established case law.

Articles 180–180b of the PILA deal with the challenge and revocation of arbitrators. The revision has brought no major change but incorporates to a large extent the rules that previously applied by references to relevant CPC provisions or according to case law.

Duty to investigate potential arbitrator conflicts

It is a firmly established principle of Swiss case law that any objection to a procedural irregularity must be raised at the earliest opportunity. If a party fails to do so, the objection is deemed to be waived and cannot be raised in annulment proceedings, as it would be incompatible with the principle of good faith if a party were to keep its objections in reserve to raise them only in the event that the award goes against it.

This principle is now enshrined in a new Article 182(4) of the PILA, stating that "[a] party that proceeds with the arbitration without immediately raising an objection to a violation of procedural rules which it knew or, exercising due diligence, ought to have known, may not subsequently raise such objection". This clarification in the law is to be welcomed, as non-Swiss parties and counsel may not be familiar with the requirement of an immediate objection. In practice, countless challenges to awards have failed due to a failure to raise a prompt and clear objection.

Assistance in favour of non-Swiss arbitrations

A new Article 185a of the PILA breaks new ground as it provides for the assistance of the Swiss courts in the enforcement of interim measures ordered by an arbitral tribunal sitting abroad, and in the taking of evidence in favour of an arbitration pending abroad. This provision deviates from the rule that Chapter 12 is only applicable to Swiss-seated proceedings. It allows easy and quick access to state enforcement and evidence preservation measures by dispensing with the need to go through the channels of international mutual legal assistance.

Remedies against arbitral awards

The revised Chapter 12 does not touch upon the grounds for challenge to an award. Article 190(2) of the PILA continues to provide for an exhaustive list of narrowly worded grounds for annulment, which ensure compliance of the arbitration with fundamental due process guarantees, and nothing more. In its abundant case law on Article 190, the Supreme Court has taken a decidedly arbitration-friendly stance by making it clear that it is unwilling to accept challenges that aim for a review of the merits of the arbitrators' decision under the guise of a purported due process violation. On average, only about 7% of challenges are successful. This trend has remained steady since the enactment of Chapter 12. As in previous years, the time required by the Supreme

Court to decide on a challenge is on average below six months.

To enhance the user-friendliness of Chapter 12, Article 190(4) reminds parties that the time limit for the challenge is 30 days from the notification of the award (see Article 100(1) of the Supreme Court Act). In addition, a new addition to Article 77(1) of the Supreme Court Act clarifies a previously open question by stating that challenges to awards are admissible irrespective of the amount in dispute.

Furthermore, a new Article 189a of the PILA now expressly acknowledges the right to interpretation or correction of the award, and the right to request an additional award.

Moreover, in accordance with established case law, which had filled a gap in the previous law, a new Article 190a provides that a party may request the revocation (called "revision") of an award that is tainted by particularly serious flaws, including where a party was unable to discover grounds for challenge of an arbitrator before the arbitration proceedings were terminated and no other remedy is available. A request for revocation must be filed within 90 days from the discovery of the grounds for challenge and no later than ten years from the day on which the award became final and binding. The sole judicial authority to revoke an award is the Supreme Court. If the application is allowed, the Supreme Court does not decide on the merits of the dispute itself but refers the case back to the arbitral tribunal that made the award, or to a new arbitral tribunal to be constituted in accordance with the applicable rules. The same rule applies in challenge proceedings.

A New Swiss Arbitration Platform Brings Together the Leading Players in the Field

On 1 June 2021, the Swiss Arbitration Association (ASA) launched a global first: an online platform providing access to an entire jurisdiction. www.swissarbitration.org is an entry portal for everything related to commercial and investment arbitration with a link to Switzerland: organisations, services, know-how, resources, events, people and references. Organised and maintained by ASA, it serves as a one-stop shop for practitioners and users worldwide.

Besides ASA and the Swiss Arbitration Centre, the successor of the Swiss Chambers' Arbitration Institution (SCAI), the new platform also includes the independent Swiss Arbitration Academy and the Swiss Arbitration Hub, ASA's platform for hearing logistics. Other leading arbitration- and ADR-related organisations active in Switzerland are also represented and can be accessed through the website. In the future, additional organisations may be admitted on the platform to further strengthen the offerings of Swiss arbitration.

The Swiss Rules – in a Revised Edition – Are Now Administered by the Swiss Arbitration Centre in Co-operation with the Swiss Arbitration Association

Taking effect at the end of May 2021, SCAI has been converted into a Swiss limited liability company and renamed Swiss Arbitration Centre Ltd (the "Swiss Arbitration Centre", or "Centre"). ASA has taken the lead as majority shareholder. The conversion does not affect the validity of existing arbitration or mediation agreements referring to SCAI or any cantonal Chambers of Commerce.

In the second half of 2020, the Swiss Arbitration Centre took advantage of its reorganisation to make a detailed review of the Swiss Rules and explore where changes were necessary. The 2021 revision of the Swiss Rules takes into account past practical experience with the Rules, the suggestions received from users, and

recent international developments. The resulting changes may be grouped into five main areas.

New provisions on multiparty and multicontract arbitration

The provisions on multiparty and multicontract arbitration have been refined. Most importantly, the new Article 5 provides for a gatekeeping test for multicontract claims. Where claims are made under more than one arbitration agreement, the arbitration will proceed unless the court determines that the arbitration agreements are "manifestly incompatible". This is only an "entrance" test that, if passed, allows claims to proceed to the arbitral tribunal. However, the arbitral tribunal retains the power to rule on any objections regarding whether claims can be determined together. It is for the arbitral tribunal to determine the appropriate criteria as they are not defined in the Swiss Rules. However, tribunals will usually seek to establish whether there was express or implied consent of the parties, given the consensual nature of arbitration.

The revised Swiss Rules also contain more detailed provisions on cross-claims, joinder and intervention; eg, situations where a respondent raises a claim against another co-respondent, or joins an additional party, or where an additional party seeks to intervene in the proceedings by raising claims against an existing party. While all these scenarios were already possible under the old Rules, the new provisions provide more guidance regarding the process as such and the role of the Centre. As a result, a new Article 6 states that cross-claims, joinder and intervention require the submission of a separate notice of claim. Before the constitution of the arbitral tribunal, the notice is to be submitted to the Secretariat. After constitution of the arbitral tribunal, cross-claims, joinder and intervention are still possible in principle if allowed by the tribunal ("after consulting with all parties, taking into account all circumstances"). In practice, in view of the parties' right to participate in the constitution of the arbitral tribunal, the joining of an additional party at this stage will normally only be possible if that party accepts the tribunal as constituted.

Finally, the revised Swiss Rules in Article 6(4) now expressly refer to the possibility of a third person participating "in a capacity other than an additional party", subject to the tribunal's permission. This refers to the participation of a third person that is neither a claimant nor a respondent but intervenes in support of one of the parties. The third person may wish to intervene upon its own initiative or because of a third-party notice. With such notice, the respondent requests the participation of the third person in order to extend the effects of the award to it. The goal is for the Swiss Rules to leave room – in appropriate and limited circumstances – for this form of participation. The arbitral tribunal will have to consider all circumstances, including the consensual nature of arbitration.

Adaptation to technological developments

The Swiss Rules contain responses to technological developments. The parties can now opt for paperless filing of the Notice of Arbitration and the Answer, and the arbitral tribunal may decide to hold hearings remotely after consulting with the parties (Articles 3(1) and 27(2)). Furthermore, at the initial conference, the arbitral tribunal and the parties are to discuss data protection and cybersecurity to the extent needed (Article 19(2)).

Stronger role of the Centre

Several new provisions strengthen the role of the institution. As a result, all deposits will now be held by the Secretariat and there is no longer the possibility for deposits to be held by the arbitral tribunal (Appendix B Section 4.1). Furthermore, the Secretariat is now to receive electronic copies of all communications (Article 16(2)). Finally,

awards will be notified by the Secretariat and no longer by the arbitral tribunal (except for emergency arbitration) (Article 34(5)).

Requirements for independence and impartiality of arbitrators

Further changes have been made in the area of independence and impartiality. The requirements of disclosure of the arbitrators have been clarified and adjusted to modern arbitration practice (Article 12). This includes that an arbitral tribunal may oppose the appointment of a new representative where this would risk jeopardising the impartiality or independence of the arbitral tribunal (Article 16(4)).

Promoting efficiency

Finally, several amendments were made to further promote efficiency. As soon as practicable, the arbitral tribunal shall hold an initial conference with the parties and prepare a procedural timetable. The timetable not only includes the time limits for the parties but also an estimate of the time required by the tribunal for its main decisions (Articles 19(2) and (3)). An express provision invites the tribunal to take into account in the allocation of costs whether a party contributed to the efficient conduct of the proceedings and the avoidance of unnecessary costs and delays (Article 40(1)). A new provision emphasises that the parties may, at any time during the arbitration proceedings, agree to resolve their dispute by mediation or any other forms of ADR (Article 19(6)).

With these changes, the Swiss Rules have managed to adapt to modern trends while keeping the flexibility of the previous Rules.

COVID-19 Has Led to Further Flexibility and Options in Swiss Arbitration

Due to the COVID-19-pandemic, many arbitrations came to a halt in the first half of 2020, with parties asking for a stay of their deadlines to make submissions, and postponement of the hearings. While this led to some delays initially, arbitrators and parties soon considered the option of holding hearings virtually instead of in-person, thus allowing arbitrations to proceed. The Swiss arbitration law, which is well known for its flexibility, did not stand in the way of holding such virtual hearings for arbitrations seated in Switzerland, and would not hinder enforcement of arbitral awards on this ground as long as the parties' right to be heard has been warranted. Furthermore, the Swiss Rules even before the 2021 revision allowed the arbitral tribunal to direct that witnesses or expert witnesses be examined through means that do not require their physical presence at the hearing (including by videoconference), thus not requiring express consent of the parties.

Likewise, the ICC Rules, which govern many of the arbitrations seated in Switzerland, were also understood not to hinder virtual hearings if appropriate considering the circumstances. The Swiss Rules and the ICC Rules, following the experiences born from the COVID-19-pandemic, now contain specific provisions on virtual hearings in their revised versions issued in 2021.

Experience with virtual hearings in arbitrations seated in Switzerland has been largely positive. Parties have come to appreciate the efficiency of virtual hearings and that arbitrations were able to proceed despite the impossibility of holding hearings in-person. Recent experience, however, has shown that particularly in larger cases, parties wish to go back to in-person hearings if the situation so permits, since they feel that in-person hearings are better suited for the examination of witnesses due to the immediate impression that witnesses leave on the arbitral tribunal if they are in the same room. If virtual hearings are held, an important lesson from the experience gathered during the pandemic is to ensure that all witnesses are familiar with

the technical details and that a test run be held before the hearing to prevent technical disruptions as best as possible.

As a further consequence of the pandemic, the authors have observed a rise in disputes involving force majeure claims or defences. Under Swiss law, there is no statutory definition of "force majeure". Therefore, parties benefitted from having express force majeure clauses in their contracts defining the consequences of the occurrence of a force majeure event on the parties' contractual relationship.

Limits of the Duty to Investigate Potential Arbitrator Conflicts

In the past decade, the Supreme Court has had to decide on average on about 36 challenges to awards each year, in addition to occasional applications for revocation of awards. The high caseload entails frequent opportunities for the Supreme Court to decide on unsettled issues, thus adding to an already very rich and nuanced body of case law.

For the purpose of this report, the decision in Sun Yang v WADA and Fédération Internationale de Natation (FINA) is singled out. In this landmark ruling made on 22 December 2020 (Judgment 4A_318/2020, published in part in the official reporter, 147 III 65), the Supreme Court, for the first time, clarified the scope of the duty to investigate potential arbitrator conflicts, referred to as "duty of curiosity".

On 28 February 2020, a CAS panel chaired by Italian Judge Franco Frattini unanimously found that Chinese swimmer Sun Yang had violated Article 2.5 of the FINA Doping Control Rules by his conduct during an unannounced doping control and suspended the athlete for eight years. On 15 June 2020, after expiry of the time limit to challenge the award under Article 190 of the PILA, Mr Sun applied for revocation of the CAS award, requesting its annulment and the removal of Mr Frattini.

In support of his application, Mr Yang submitted that he had learned from an internet article published on 15 May 2020 that Mr Frattini had repeatedly made unacceptable tweets with regard to Chinese nationals in 2018 and 2019 (ie, both before and during the CAS arbitration), which raised legitimate doubts as to his impartiality in a dispute involving a Chinese athlete. In the tweets, Mr Frattini criticised the slaughter of dogs and cats during the annual festival in Yulin, China, and accused the individuals involved of torture, using several violent terms.

The World Anti-Doping Agency (WADA) and CAS took the view that the right to challenge Mr Frattini had lapsed, as the athlete could, and should, have discovered the tweets during the arbitration had he made appropriate internet searches. Mr Yang explained that his counsel had conducted a Google search when Mr Frattini was appointed on 1 May 2019. According to Mr Yang, none of the tweets in question appeared when his counsel Googled the words "Franco + Frattini", "Franco + Frattini + sport", or "Franco + Frattini + Court of Arbitration for Sport". CAS argued, inter alia, that Mr Yang should have searched using "Frattini" and "China", which would have been sufficient to make some of the tweets appear on the first page of the search results. WADA further submitted that the athlete should have examined the "leading social networks such as Facebook, Twitter, Instagram".

The Supreme Court for the first time clarified that the "duty of curiosity" has its limits. The parties to an arbitration can be expected to conduct investigations, especially via the internet. They can be expected to use the main search engines and consult sources that can provide information about potential conflicts, such as the websites of those involved in the arbitration (institution, par-

ties, counsel and their law firms, as well as the arbitrators and their firms, etc). However, a party cannot be expected to perform a systematic and thorough screening of all available sources relating to an arbitrator. Thus, the fact that information is freely accessible on the internet does not ipso facto mean that a party that was not aware of it has failed in its duty to investigate potential arbitrator conflicts. In this respect, the circumstances of the case will remain decisive. Similarly, the Court did not exclude that a party may be required to examine various social networks but stressed that it might be appropriate not to be too demanding in this respect, so as to avoid very extensive, if not unlimited, time-consuming investigations.

In this case, it was undisputed that Mr Frattini's Twitter account appeared amongst the first results when his first name and surname was entered into the search engine, but it was not established that such a search would have made it possible to display the controversial tweets. The Supreme Court found that Mr Yang had not failed in his duty to investigate potential conflicts by not detecting the tweets published by Mr Frattini almost ten months before his appointment and drowned in a mass of messages on his Twitter account. Moreover, Mr Yang could not be blamed for not including "China" in the Google search, as there was nothing to suggest that Mr Frattini might have preconceived ideas about athletes of Chinese origin. The Supreme Court also held that a party cannot be required to continue its internet searches throughout the arbitration, let alone to scan the messages published by the arbitrators on social networks during the proceedings. On the merits, the Supreme Court held that the violent terms used by Mr Frattini in his tweets, although issued in a particular context and targeting individuals appearing in photos and videos, went beyond a critique of behaviour that was perceived as brutal, in that they referred to the skin colour of the persons involved. As such, they were inadmissible and raised justified doubts as to his impartiality.

This judgment is to be welcomed. Whilst previous decisions have, in the authors' view, gone too far in the interpretation of the duty to investigate potential arbitrator conflicts, the Sun Yang ruling adopts a balanced and nuanced approach by making it clear that the scope of this duty depends on the individual circumstances and may not generally go so far as to require the parties to screen systematically and thoroughly all information accessible on the internet relating to an arbitrator, let alone to continue to do so during the arbitration. That said, in individual cases, it may be difficult for a party to assess where exactly the limits of the duty lie.

Conclusion

Switzerland maintains its position as a globally leading seat. The recent modernisation of its legal framework will enhance its attractiveness as an arbitration hub. The authors particularly expect to see it gain further popularity as a preferred seat for investor-state disputes.

Walder Wyss is a leading Swiss full-service law firm, operating with more than 240 lawyers through six offices across all the linguistic regions of Switzerland (Zurich, Geneva, Basel, Bern, Lausanne, Lugano). The firm has one of the largest dispute resolution teams in Switzerland, combining specialists of various nationalities and working languages. Walder Wyss's arbitration practitioners, teaming up with specialists of other fields within the firm, represent parties in all types of contractual and commercial matters, with a particular focus on complex, high-value, cross-border disputes. Many also regularly sit as arbitrators. The firm has extensive expertise in both institutional arbitration under all major rules (eg, Swiss Rules, ICC, LCIA, SIAC, WIPO and DIS Rules) and ad hoc proceedings (including under the UNCITRAL rules). Its arbitration specialists serve in various functions in arbitral institutions and professional organisations, including ICC Switzerland, the ICC Commission of Arbitration and ADR, the Board of the Swiss Arbitration Association (ASA), the Arbitration Court of the Swiss Arbitration Centre, the German Arbitration Institute (DIS), and the International Advisory Body of the Vienna International Arbitral Centre (VIAC).

AUTHORS

Diana Akikol is a full-time arbitration partner in the Geneva office of Walder Wyss. She acts as counsel and arbitrator, with a particular focus on sales, M&A, shareholders' agreements, joint ventures, construction, agency, licence and distribution, as well as services and consultancy agreements. Diana Akikol serves as ICC Court member for Switzerland. She is a member of the Board of the Swiss Arbitration Association, the Court of the Swiss Arbitration Centre and the International Advisory Body of the Vienna International Arbitral Centre. Diana Akikol holds a law degree from the University of Fribourg and a doctorate degree from the University of Lucerne. She was admitted to the Bar in 2002.

Rodolphe Gautier has almost 21 years of experience working in litigation and arbitration. His practice focuses on commercial and banking disputes in Switzerland and international arbitration involving Swiss-connected parties, assets, substantive law or seats of arbitration. Rodolphe holds a Master of Law degree, specialising in European Law, with distinction, from the University of Fribourg, and is admitted to practice in all of Switzerland. He is also registered and admitted to practice as a foreign lawyer with the Singapore International Commercial Court. He is on the list of arbitrators of ICC (Switzerland) and of SIAC (Singapore), and a member of the Swiss Arbitration Association (ASA) and of the Singapore Institute of Arbitrators (MSiarb).

Contributed by: *Diana Akikol, Rodolphe Gautier, Andrea Meier and Dieter Hofmann,* ***Walder Wyss***

Andrea Meier is a partner at Walder Wyss. She has acted as counsel and arbitrator in more than 75 arbitrations. Recent arbitrations have involved construction contracts, joint ventures, disputes in the mobility and telecommunications sector, energy disputes, post-M&A disputes, and sales and distribution agreements. Andrea Meier holds a law degree and a doctorate degree from the University of Zurich and a postgraduate degree from Harvard Law School. She is vice president of ASA (Swiss Arbitration Association), a member of the Arbitration Court of the Swiss Arbitration Centre, and an alternate member of the Selection Committee of the German Arbitration Institute.

Dieter Hofmann has been practising dispute resolution for more than 25 years, focusing on international litigation and arbitration in complex cases. He heads the disputes practice group at Walder Wyss. He has in-depth experience in complex disputes arising from shareholders' agreements, joint ventures, M&A, international contracts, engineering and construction, banking, finance, (re)insurance and insolvency, etc. He also sits as arbitrator in international arbitrations. Dieter is chair of the Zurich Bar Association's litigation practice group and has served in various international professional bodies and regularly publishes in his fields of expertise.

Walder Wyss Ltd

Rue d'Italie 10
P.O. Box
1211 Geneva 3
Switzerland Seefeldstrasse 123
P.O. Box
8034 Zurich
Switzerland

Tel: +41 58 658 30 00
Fax: +41 58 658 59 59
Email: reception@walderwyss.com
Web: www.walderwyss.com

walderwyss