

Michael Feit

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Biography

Michael Feit is a partner in Walder Wyss' arbitration department. He has extensive experience in representing parties in complex arbitration disputes under all major arbitration rules and in ad hoc proceedings. He also sits as an arbitrator, in both commercial and investment arbitrations. Michael has acted in arbitrations seated in civil law and common law jurisdictions around the globe. His practice encompasses a broad range of industries, including distribution agreements, construction, pharmaceuticals, telecommunication, renewable energy and post-M&A disputes.



What do you enjoy most about working in arbitration?

Practising in the field of arbitration gives you the unique opportunity to work in a truly international environment. The parties, counsel, arbitrators, witnesses and experts may come from all over the globe, and a variety of national laws and international conventions may be relevant to the dispute. I thoroughly enjoy learning from parties about their industry in their home country and exchanging views on legal questions with your co-counsel or your fellow arbitrators from different jurisdictions.

What skills are required for arbitrating in different seats, and how does your experience on this front enhance your practice?

Practising in international arbitration requires an international mindset. We all carry our cultural backpack, but one should be mindful that there might be a slightly different legal approach to address an issue in a different jurisdiction. What might be the best solution in a domestic Swiss arbitration might not necessarily be the best approach in an international case seated outside of Switzerland. When, for example, sitting as an arbitrator in an arbitration seated outside of one's home jurisdiction, I believe that one should be respectful to legal and cultural particularities and take them into consideration when assessing a legal issue. While there are many common grounds in international arbitration, and in many areas a globally accepted best practice has emerged over the years, there may still be relevant nuances between different jurisdictions. Learning about those differences makes one a more complete international arbitration practitioner, and adopting a comparative approach enhances the quality of your work.

What challenges differentiate commercial arbitrations and investor-state cases, and do you have a preference?

Investor-state arbitrations require a careful balancing of factors that are of public interest and therefore typically go beyond those of

two private parties. I have been fascinated by those questions for many years. Commercial arbitrations, however, are regularly decided on the basis of individually agreed rights and duties. The proper construction of the relevant contractual clauses requires an in-depth understanding of the parties' intentions and expectations when entering into the agreement. I do not prefer one over the other, but rather enjoy the features of both of these arbitrations.

To what extent has maintaining expertise across a broad range of industry sectors benefited your practice?

Practising in a variety of industry sectors enhances the quality of your legal advice. You can draw from a broader set of experiences and it allows you to present more creative arguments. You may, for example, be aware of case law in a different field of law, the rationale of which you can successfully use in your present case.

What is the most challenging aspect of post-M&A arbitration proceedings?

When acting as counsel for the purchaser one has to act quickly yet with great care. The contract or the applicable statutory law may provide for narrow time frames to notify the seller about defects and counsel for the purchaser must ensure that any such notification is made in the contractually agreed form. If no amicable solution can be reached, the applicable prescription period to file a claim may be short, which requires a swift analysis of the case. An important part of that analysis pertains to the question as to whether the purchaser gained or could have gained knowledge of the defect during the due-diligence process.

What steps can the Swiss arbitration community take to remain competitive against other arbitration centres gaining prominence?

The legal framework for Swiss seated arbitrations remains excellent. The recent revisions

of the Swiss international arbitration law and the Swiss Rules of International Arbitration are designed to ensure Switzerland's continued popularity as one of the world's leading jurisdictions for arbitration and to even increase Switzerland's attractiveness. The Swiss arbitration community is very active and driven by the desire to offer the best possible environment for arbitration. We need to continue advertising the advantages Switzerland offers so that our global users are aware of the benefits of arbitrating in Switzerland.

How efficient has the shift towards remote and virtual hearings been in the past year or so? Are they here to stay?

Compared to state court proceedings, arbitration proved to be better equipped to adapt swiftly to changing circumstances. After a comparatively short period of time, there was a successful shift to remote hearings. While remote hearings may still at times pose challenges, the overall experience has been good. There is now an increased acceptance to make use of remote hearings which I am confident will stay. There are factors that speak in favour of holding remote hearings (such as a relatively low amount in dispute with parties and witnesses spread out all over the globe), which parties, counsel and arbitrators will consider when deciding on how to conduct the hearing.

What advice would you give to someone starting out in international arbitration?

Practising in the field of international arbitration provides you with the opportunity to work in a truly international environment. This requires, in my view, to be respectful of differences in legal systems and cultures. Keep an open mind, be curious, and be willing to learn from others.

WWL says: Michael Feit is "highly regarded" for his adept handling of high-value disputes across a range of sectors, including energy, aviation and construction.