

Newsletter

# Special Edition

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## Switzerland Maintains its Globally Leading Position in International Arbitration:

The newly published ICC Report on dispute resolution confirms the popularity of Switzerland, Swiss arbitrators and Swiss law in international arbitration.

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## The ICC's 2017 Statistical Report once more confirms the trust that parties from all over the world place in Switzerland, Swiss arbitrators and Swiss law.

### Switzerland Performs Exceptionally Well in the 2017 Statistical Report of the ICC

The International Chamber of Commerce ("ICC") published end of July 2018 its statistical report relating to dispute resolution in 2017 (the "ICC's 2017 Report").

The ICC's 2017 Report confirms the leading role that Switzerland, Swiss arbitrators and Swiss law continue to play in international arbitration.

Switzerland was the second most frequent seat for ICC arbitrations with 90 cases. It was preceded only by France, and was ranked ahead of the United Kingdom and the US. Geneva was picked as the seat in 51 cases, while Zurich was chosen 36 times. Combined, arbitrations seated in Geneva and Zurich amounted to 13% of all ICC arbitrations.

Switzerland was the third most frequent nationality of arbitrators appointed and confirmed in ICC arbitrations with 7.8% of the total number. Together with arbitrators from the United Kingdom and France, Swiss arbitrators were globally within the top three.

As for the contractual choice of law made by the parties, Swiss law has been the fourth most frequent choice.

### The Reasons for Switzerland's Continued Success

Switzerland has a long standing tradition to serve as the seat for international disputes. Thanks to its very arbitration friendly legal framework, and overall encouraging factors such as Switzerland's neutrality, stability and business friendly environment, Switzerland has remained a top choice for international arbitration for parties from all over the world. While safeguarding the parties' equal treatment and their right to be heard, Swiss arbitration law is appreciated for its procedural flexibility and respect for party autonomy. Swiss arbitration law acknowledges and Swiss state courts strictly adhere to the principle that arbitrators decide on their own jurisdiction (commonly referred to as *Kompetenz-Kompetenz* or *compétence-compétence*); there is, therefore, no risk of local court intervention frustrating an arbitration seated in Switzerland.

A motion to set aside an international arbitration award can only be filed before the Swiss Federal Supreme Court based on very limited and narrowly defined grounds. A review of the award on the merits is limited to the question of whether the award is incompatible with public policy, a test to which a very high threshold applies. The Swiss Federal Supreme Court has consistently shown

considerable restraint when adjudicating setting aside motions.

Switzerland, furthermore, offers a large pool of highly qualified Swiss arbitrators who often have a good command of several languages. The Swiss arbitration community consists of highly trained practitioners who regularly organise seminars and conferences, in which practical insights are shared and thoughts are exchanged with the goal to provide the best service possible for the users.

Finally, the popularity of Swiss law may be explained by Switzerland's liberal economic order. Swiss contract law is business friendly and emphasises party autonomy. The Swiss Constitution guarantees economic freedom, and one aspect of it is the principle of contractual freedom. Swiss contract law expressly provides that the parties may freely determine the terms of a contract within the limits of the law. Professional parties therefore enjoy much freedom in tailoring their contracts.

The Walder Wyss Newsletter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this Newsletter should seek specific advice on the matters which concern them.

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