

Newsletter No.

126

---

## Switzerland to further increase its attractiveness as a seat of arbitration

End October 2018, the Swiss Federal Council published its explanatory report on the proposed revision of Swiss international arbitration law. The goal of the revision is to make Swiss international arbitration law even more user-friendly.

---

# User-friendly revision of Swiss international arbitration law



By Michael Feit

Partner

Dr. iur., LL.M., Attorney at Law

Phone +41 58 658 55 08

michael.feit@walderwyss.com



and Chloé Terrapon

MLaw, LL.M., Attorney at Law

Telefon +41 58 658 55 37

chloe.terrapon@walderwyss.com

Early 2017, the Swiss Federal Council proposed to revise Swiss international arbitration law. It has now published its explanatory report and draft amendments to chapter 12 of the Swiss Private International Law Act ("PILA"). Adopted about thirty years ago, chapter 12 of the PILA has gained global praise for its clarity and flexibility. It has greatly contributed to Switzerland's success as a seat for international arbitration. Its modernization will ensure Switzerland's continued popularity as one of the world's leading jurisdictions for arbitration.

## Chapter 12 – success story and new perspectives

Switzerland enacted the PILA and its chapter 12 in 1989. It could have simply adopted the 1985 UNCITRAL Model Law on International Commercial Arbitration. But it decided to go its own way by opting for a modern, concise and flexible statute. Chapter 12 is still globally lauded as an innovative arbitration law.

The proposed revision will maintain all the successful features of chapter 12, while modernizing it to ensure its continued success. The amendments aim to implement the case law of the Swiss Federal Supreme Court developed over the last thirty years and to clarify some unresolved issues, as well as to improve party autonomy and legal certainty.

## Overview of the key amendments

The revision clarifies the **scope of application** of chapter 12. Chapter 12 will apply if at least one of the parties had its seat or domicile outside of Switzerland at the time of the conclusion of the arbitration agreement.

The **form requirements for arbitration agreements** will be modernized. The reference to telegram, telex and telefax is clearly outdated and will be deleted in favour of the simpler formulation already adopted for domestic arbitration at article 358 of the Swiss Civil Procedure Code ("CPC") ("in writing or in any other form allowing it to be evidenced by text").

The draft statute also provides that chapter 12 applies by way of analogy to arbitration clauses contained in unilateral legal acts (such as, for instance, last wills) or articles of association.

The draft removes references to the CPC related to the **appointment and replacement of arbitrators**. The relevant provisions will be incorporated directly into chapter 12. This aims at increasing the user-friendliness of chapter 12, in particular towards foreign parties, who will no longer need to consult other statutes. Of particular interest is a new provision pursuant to which the court seized first is competent to appoint the arbitrator(s) when the parties have not designated a specific arbitral seat within Switzerland. This new provision is in line with the principle *in favorem validitatis* and will prevent deadlock situations. The draft also codifies the duties of the arbitrators regarding **independence and impartiality**, and provides for further provisions on **challenge and dismissal**.

Chapter 12 will now expressly stipulate the duty to **raise procedural objections immediately**. This amendment serves to improve legal certainty. The requirement to object promptly to any (real or perceived) procedural irregularities flows from the general principle of good faith and is well-anchored in the case law of the Swiss Federal Supreme Court.

The draft bill also foresees additional provisions regarding the **juge d'appui**. Proceedings before the *juge d'appui* will

be conducted in summary proceedings. As a service to the international arbitration community, foreign parties and foreign seated arbitral tribunals will be granted direct access to the Swiss *juge d'appui* in support of arbitrations seated abroad. Under the current regime, such requests had to pass through international judicial assistance channels, which has often proven to be a time-consuming exercise.

The draft bill further implements the case law of the Swiss Federal Supreme Court by providing for specific provisions regarding **correction, explanation, amendment and revision** of arbitral awards.

The 30 days **deadline** for setting aside applications, which until now was stipulated in the Swiss Federal Supreme Court Act, will also be incorporated in chapter 12. This, again, is meant to improve the user-friendliness of Swiss international arbitration law.

To reflect the global reach of Swiss arbitration and to serve its international users, the draft bill also proposes to amend the Swiss Federal Supreme Court Act in order to allow **briefs to the Federal Supreme Court in English**. In practice, the Federal Supreme Court does not request in most cases translations of English exhibits and documents. However, under the current regime, submissions must be drafted in one of Switzerland's official languages. Allowing briefs in English will promote efficiency and is also in line with the demands of the global arbitration community. The explanatory report of the Swiss Federal Council makes clear that the term "brief" used in the draft statute refers to all documents submitted to the Federal Supreme Court by the parties. The orders and judgments issued by the Federal Supreme Court will, however, continue to be drafted in one of Switzerland's official languages.

### Next steps and perspectives

The Swiss Parliament will now debate and vote on the draft bill. During that process, the draft bill may be modified. Therefore, the timeline for the entry into force of the revision as well as the definitive wording of the amendments remain open.

Chapter 12 provided a uniquely arbitration-friendly framework thanks to which Switzerland developed into one of the most popular places of arbitration worldwide. By way of example, Switzerland is one of the most frequently chosen seats for ICC arbitrations, and is also host to an increasing number of investor-State arbitrations. It is also proud to serve as the seat for sports arbitration under the auspices of the Court of Arbitration for Sport in Lausanne, and to be home to several international organizations, such as the World Intellectual Property Organization and its Arbitration and Mediation Center as well as the World Trade Organization. Pursuant to the explanatory report of the Swiss Federal Council, Switzerland hosts some 1'000 arbitral proceedings every year. The recent 2018 Queen Mary and White & Case International Arbitration Survey also highlighted the popularity of Switzerland and of Swiss arbitrators in the global arbitration scene.

International arbitration has globally become an increasingly competitive market, and it is therefore to be welcomed that Switzerland does not intend to rest on its laurels but continues to work towards improving user-friendliness as well as legal certainty in international arbitration.

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.

© Walder Wyss Ltd., Zurich, 2018

---

**Walder Wyss Ltd.**  
Attorneys at Law

Phone + 41 58 658 58 58  
Fax + 41 58 658 59 59  
reception@walderwyss.com

[www.walderwyss.com](http://www.walderwyss.com)