

SWITZERLAND CONTINUES TO LEAD IN INTERNATIONAL ARBITRATION

The newly published ICC Report on dispute resolution and the 2018 Queen Mary and White & Case International Arbitration Survey confirm the popularity of Switzerland, Swiss arbitrators and Swiss law in international arbitration

1. Recent studies once more evidence the trust parties from all over the world place in Switzerland, Swiss arbitrators and Swiss law

- a. The International Chamber of Commerce (“ICC”) published at the 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 Switzerland, Swiss arbitrators and Swiss law continue to play in international arbitration.
- b. 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. Arbitrations seated in Geneva and Zurich combined amounted to 13 per cent of all ICC arbitrations.
- c. The popularity that Switzerland enjoys in international arbitration is also confirmed by the recent 2018 Queen Mary and White & Case International Arbitration Survey. In that survey, it was noted that Switzerland stood out once again as a particularly popular jurisdiction with 38 per cent of the respondents indicating a preference for Swiss seats (preceded in that survey by London, Paris and virtually on a par with Singapore). When those respondents who thought that Brexit would have a negative impact on London as a seat were asked about which seats they thought would benefit, Switzerland even held the second spot.
- d. Pursuant to the ICC’s 2017 Report, Switzerland was the third most frequent nationality of arbitrators appointed and confirmed in ICC arbitrations with 7.8 per cent of the total number. Together with arbitrators from the UK and France, Swiss arbitrators were within the top three globally.
- e. As for the contractual choice of law made by the parties, Swiss law has been the fourth most frequent choice pursuant to the ICC’s 2017 Report.

2. The reasons for Switzerland’s continued success

- a. Switzerland has a long-standing tradition to serve as the seat for international disputes. Thanks to its very arbitration-friendly legal framework, and further supporting factors such as Switzerland’s neutrality and business-enabling environment, it 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 globally appreciated for its procedural flexibility and respect for party autonomy.
- b. 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. Empirical studies of the decisions of the Swiss Federal Supreme Court confirm the very arbitration-friendly and laudably efficient approach Switzerland’s highest court adopts when dealing with arbitration matters. If the parties have no territorial link to Switzerland and specifically agree so, they may even waive (partially or fully) their right to apply for the setting aside of an international arbitration award.

- c. Switzerland 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.
- d. Finally, the popularity of Swiss law may be explained by Switzerland’s liberal economics. 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.

3. Attractiveness of Swiss international arbitration to be further increased

- a. 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 seated arbitration even more user-friendly.
- b. It is welcomed to see that Switzerland does not intend to rest on its laurels but continues to work towards improving the legal framework for international arbitration in Switzerland.



Michael Feit,
partner

walderwyss attorneys at law

Zurich | Geneva | Basel | Berne | Lausanne | Lugano
Seefeldstrasse 123, PO Box, 8034 Zurich, Switzerland

Tel: +41 58 658 58 58 Fax: +41 58 658 59 59 Web: www.walderwyss.com