Switzerland

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Introduction

Switzerland has a long-standing reputation as one of the preferred venues for international arbitration, whether in *ad hoc* proceedings or in proceedings administered under the rules of the leading arbitration institutions. Several factors account for this reputation, including Switzerland's political neutrality, developed infrastructure, qualified arbitration practitioners and a very arbitration-friendly legal framework.

In Switzerland, international arbitrations are governed by Chapter 12 (Articles 176-194) of the Swiss Private International Law Act ("**PILA**"), a modern and liberal arbitration law which has been in force since 1989. Although Switzerland's arbitration law is not based on the UNCITRAL Model Law, there are no major differences between the two sets of rules, but Chapter 12 PILA is much shorter. With its concise 24 articles, Chapter 12 PILA provides a streamlined set of essential provisions, which ensure the proper constitution and functioning of the arbitral tribunal and guarantee the respect of the parties' fundamental procedural rights, while giving the parties all the necessary flexibility to tailor the arbitration proceedings according to their needs.

Switzerland recently modernised and further improved the user-friendliness of its arbitration law by revising Chapter 12 PILA. The amendments, which entered into force in January 2021, aim to preserve and enhance the most attractive features of Chapter 12 PILA. The amendments are of a limited nature and did not bring about fundamental changes to Switzerland's international arbitration law. Indeed, the aim of the revision was to enact the key developments of the Swiss Supreme Court's jurisprudence on international arbitration, to clarify certain provisions and to strengthen party autonomy, while preserving and enhancing the most attractive features of Chapter 12 PILA. One of the main changes was the introduction of the right to submit challenges of international arbitral awards and revision requests before the Swiss Supreme Court in English (and no longer necessarily in one of Switzerland's national languages).[1]

In Switzerland, domestic arbitration is governed by Part 3 of the Swiss Code of Civil Procedure, which applies to arbitrations seated in Switzerland where, at the time of the conclusion of the arbitration agreement, all parties had their domicile, seat or habitual place of residence in Switzerland. However, parties to a domestic arbitration may choose to apply Chapter 12 PILA but must express this choice in writing.

While many arbitrations in Switzerland are *ad hoc*, *i.e.*, not governed by a specific set of arbitration rules, parties frequently choose to apply the arbitration rules of a specialised institution. The most frequently used arbitration rules in Switzerland are:

- the Rules of Arbitration of the ICC International Court of Arbitration (**ICC Rules**);

- the Swiss Rules of International Arbitration (**Swiss Rules**), a uniform set of arbitration rules issued by the Swiss Arbitration Centre; and
- the Code of sports-related arbitration rules applicable before the Court of Arbitration for Sport (**CAS Rules**).

In addition to the Court of Arbitration for Sport, Switzerland hosts many other international organisations or dispute settlement institutions, such as the United Nations, the World Trade Organization, the World Intellectual Property Organization, the International Air Transport Association, the International Olympic Committee (**IOC**) and major international sports organisations such as FIFA and UEFA.

Arbitration agreement

Swiss arbitration law provides that any dispute with an economic interest may be subject to arbitration (Article 177(1) PILA). This broad definition of arbitrability opens arbitration in Switzerland to a wide range of commercial disputes.

The cornerstone of arbitral proceedings in Switzerland is the existence of a valid arbitration agreement. The arbitration agreement must be made in writing to be formally valid (Article 178(1) PILA). The signature of the parties is not required.

As regards substantive validity, an arbitration agreement must comply with either the law chosen by the parties to govern the arbitration agreement, the law governing the object of the dispute, in particular the law applicable to the principal contract, or Swiss law (Article 178(2) PILA). This alternative test reflects Switzerland's pro-arbitration approach: it enables tribunals to uphold an arbitration agreement that would be invalid under the law chosen by the parties or the law applicable to the principal contract, provided that it at least satisfies the requirements of Swiss law. Under Swiss law, what is decisive is the intent of the parties to subject their dispute to arbitration.

Swiss law recognises the doctrine of separability, pursuant to which the invalidity of the principal contract does not automatically render the arbitration agreement it contains unenforceable (Article 178(3) PILA). Applying the separability doctrine, the Swiss Supreme Court has upheld an arbitration clause contained in a draft contract which was ultimately never signed.[2]

As part of the recent amendments to the Swiss arbitration law, the provisions of Chapter 12 PILA now apply by analogy to an arbitration clause in a unilateral transaction or in articles of association (Article 198(4) PILA).

Swiss law is based on the principle of privity of contract, by which an arbitration clause is binding and has legal effect only on the parties that have originally agreed to it. Case law has, however, recognised certain exceptions to this rule. In particular, the Swiss Supreme Court has held that the arbitration agreement may be extended to a third party in cases where the third party participated in the negotiations or performance of the contract, thereby demonstrating a willingness to be bound by the arbitration agreement.

Arbitration procedure

The arbitration commences when one of the parties seizes the arbitrator(s) designated in the arbitration agreement or, in the absence of such a designation, when one of the parties initiates the procedure for the constitution of the arbitral tribunal (Article 181 PILA). The constitution of the arbitral tribunal is discussed in further detail below.

The parties are free to decide on the procedural rules applicable to the arbitral proceedings, either directly or by reference to an existing set of arbitration rules or other procedural rules

of their choice (Article 182(1) PILA). If the parties do not agree on the procedure, it will be determined by the arbitral tribunal (Article 182(2) PILA). Irrespective of the procedural rules chosen by the parties, the arbitral tribunal must ensure equal treatment of the parties and their right to be heard in adversarial proceedings (Article 182(3) PILA).

The arbitral tribunal is competent to decide on its own jurisdiction (competence-competence principle), even if proceedings concerning the same subject-matter, and between the same parties, are already pending before a state court or another arbitral tribunal, unless there are serious reasons to stay the arbitration (Articles 186(1) and 186(1*bis*) PILA). Any objection to the arbitral tribunal's jurisdiction must be raised prior to any defence on the merits (Article 186(2) PILA).

Swiss arbitration law does not address the confidentiality of the arbitral proceedings. In practice, confidentiality undertakings are often included in the applicable procedural rules or in the institutional rules chosen by the parties (*e.g.*, Article 44 of the 2021 Swiss Rules). In Switzerland, exceptions to confidentiality undertakings apply if disclosure is required by a legal duty, to protect or pursue a legal right or to enforce or challenge an award in legal proceedings before a judicial authority.

Swiss arbitration law does not contain specific rules on the taking of evidence, disclosure, or discovery. Nor does it contain specific rules of privilege. The arbitral tribunal determines the applicable rules for the taking, as well as the admissibility, relevance, and materiality, of evidence. In so doing, the arbitral tribunal must have due regard to any agreements reached by the parties. In practice, arbitral tribunals will often be guided by the IBA Rules on the Taking of Evidence in International Arbitration.

If coercive assistance is required in the taking of evidence, the arbitral tribunal, or a party with the arbitral tribunal's consent, may request such assistance from the court at the seat of the arbitration (Article 184(2) PILA). The relevant Swiss state court will apply its own law on the taking of evidence and, on request, it may apply or take account of other forms of procedure (Article 184(3) PILA). An arbitral tribunal with a seat abroad or a party to foreign arbitration proceedings may now also, with the consent of the arbitral tribunal, request a Swiss state court, at the place where the evidence is to be taken, to participate in the taking of that evidence (Article 185a(2) PILA).

Any person may be a fact or expert witness in a Swiss-seated arbitration. The applicable arbitral procedure determines who, when, where, in what form and by whom a witness may be heard and examined (Article 182 PILA). It is common for arbitral tribunals seated in Switzerland to require parties to submit a written witness statement for each of their fact witnesses in line with Article 4 of the IBA Rules on the Taking of Evidence in International Arbitration. These witness statements may take the form of a sworn affidavit made under oath, although signed declarations are more often used in practice. There are no mandatory rules on oath or affirmation but the arbitral tribunal may seek guidance from Article 8(4) of the IBA Rules on Evidence in International Arbitration. Providing false testimony to an arbitral tribunal seated in Switzerland may entail criminal sanctions as when made before state courts (Articles 306–309 Swiss Criminal Code).

While parties often appoint their experts, arbitral tribunals sitting in Switzerland retain the discretion to appoint their own experts. There is no requirement that experts be selected from a particular list. According to case law of the Swiss Supreme Court, tribunal-appointed experts must be independent and impartial;[3] conversely, party-appointed experts are not expected to be impartial. It is for the arbitral tribunal to assess the probative value of both forms of evidence. Swiss-seated arbitral tribunals occasionally use witness conferencing.

The use of tribunal secretaries is common, especially in complex cases. The main rule concerning the use of a tribunal secretary is the requirement that he or she be independent and impartial in the same way as the arbitrators themselves. According to the Swiss Supreme Court, the tasks of the tribunal secretary may include drafting of certain parts of the award, provided this is carried out under the control of the arbitral tribunal and in accordance with its instructions.[4]

Arbitrators

Pursuant to the principle of party autonomy, the parties enjoy freedom in the selection, removal and replacement of arbitrators (Article 179 PILA).

Generally, the parties are free to agree on the number of arbitrators (Article 179(1) PILA). The amended Chapter 12 PILA has codified the default position under Swiss law that, unless the parties agree otherwise, three arbitrators will be appointed (Article 179(1) PILA).

In the absence of an agreement, the parties may apply to the state court at the seat of the arbitration to appoint, remove or replace arbitrators (Article 179(2) PILA). The first Swiss state court seized by the parties has jurisdiction to assist the parties in appointing the arbitral tribunal, even if the parties have not agreed on a seat or have only agreed that the seat will be in Switzerland (Article 179(2) PILA). Unlike other national arbitration laws, Swiss law does not require a connection with Switzerland for its state courts to exercise judicial assistance in the appointment of the arbitral tribunal. This unique offering in the Swiss arbitration law, which was introduced as part of the amendments to Chapter 12 PILA, further bolsters Switzerland's already pro-arbitration approach. The state court shall appoint the arbitral tribunal unless a summary examination of the case reveals that there is no valid arbitration agreement between the parties (Article 179(3) PILA).

Other situations where Swiss state courts may intervene in the appointment of the arbitral tribunal are if the parties or the members of the arbitral tribunal did not fulfil their obligation within 30 days of being requested to do so (Article 179(4) PILA) and in multi-party disputes (Article 179(5) PILA).

In Switzerland, anyone may serve as an arbitrator. The only non-waivable requirement imposed by law on an arbitrator sitting in an arbitration in Switzerland is that he or she be independent and impartial (Article 180(1)(c) PILA). Aside from the requirements of independence and impartiality, the parties are free to agree on additional qualifications.

The Swiss state court at the seat of the arbitration enjoys wide discretion in the appointment of arbitrators at the request of a party, subject only to the requirements that appointees are independent and impartial (Article 180(1)(c) PILA) and meet any specific requirements contained in the arbitration agreement (Article 180(1)(a) PILA). There is no set list of arbitrators from which arbitrators are selected by state courts, unless the parties agree otherwise. Some institutional rules provide that the arbitrators must be selected from a list maintained by the institution (*e.g.,* for disputes submitted to the Court of Arbitration for Sport). The Swiss Chambers (which administer the Swiss Rules) do not maintain any list of arbitrators.

Chapter 12 PILA now explicitly states that members of the arbitral tribunal shall disclose any issues that could give rise to legitimate doubts as to their independence or impartiality, and that this obligation applies throughout the entire arbitral proceedings (Article 179(6) PILA). The 2021 Swiss Rules also provide that an arbitrator must remain impartial and independent of the parties at all times and must disclose all relevant facts which might give rise to justifiable doubts about his or her independence and impartiality (Article 12 2021 Swiss Rules). This approach embodies the transnational principle of disclosure in

international arbitration set out in General Standard 7 of the IBA Guidelines on Conflicts of Interest in International Arbitration. The Swiss Supreme Court has held on several occasions that the IBA Guidelines on Conflicts of Interest in International Arbitration are a valuable tool when determining questions of conflict of interest and are likely to continue to influence the practice of both institutions and state courts in Switzerland.[5]

An arbitrator may be challenged on the following grounds (Articles 180(1)(a) to 180(1)(c) PILA):

- the arbitrator does not meet a requirement agreed upon by the parties;
- there exists a ground for challenge under the arbitration rules agreed by the parties; or
- circumstances exist that give rise to justifiable doubts as to his or her independence.

Once the arbitral tribunal has been constituted, a party may only challenge an arbitrator whom it nominated, or in whose appointment it participated, based on information discovered after the appointment (Article 180(2) PILA). The parties are free to agree on the procedure and time limit for the challenge (Article 180a PILA). In the absence of such agreement regarding the time limit for the challenge (including by reference to institutional rules), a 30-day time-limit for the challenge applies (Article 180a(1) PILA). Within 30 days of filing the challenge request, the challenging party may request the applicable Swiss state court to reject the challenged member. The Swiss state court's decision is final (Article 180a(2) PILA). During the challenge procedure, the arbitral tribunal may continue the proceedings without excluding the challenged member, unless the parties agree otherwise (Article 180a(3) PILA).

Similarly, any member of the arbitral tribunal may be removed by the parties' agreement (Article 180b(1) PILA). If a member of the arbitral tribunal is unable to perform his or her duties within a reasonable time or with due care, any party may submit a written request to the applicable Swiss state court that he or she be removed. The Swiss state court's decision is final (Article 180b(2) PILA).

Interim relief

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of either party, order interim or conservatory measures. The arbitral tribunal has a wide discretion as to the type and content of those measures (Article 183(1) PILA). Those measures may include anti-suit injunctions to enjoin a party from starting or pursuing litigation in breach of the arbitration agreement, and anti-enforcement injunctions to prevent a party from enforcing another award or judgment.

The power of the arbitral tribunal to order interim or conservatory measures is not unlimited in that the arbitral tribunal lacks the power to enforce its orders on such measures. The arbitral tribunal may request the assistance of state courts if a party does not comply voluntarily with the order for interim or conservatory measures (Article 183(2) PILA). Assistance of the state courts may also be sought if interim or conservatory measures are required against a third party.

As long as the arbitral tribunal is not (yet) constituted and there is no other private instance empowered to grant interim or conservatory relief, the parties may request state courts in Switzerland to order such relief. The prevailing view in Switzerland is that, unless otherwise agreed by the parties, the jurisdiction of the arbitral tribunal to order interim or conservatory measures in an international arbitration is not exclusive but is concurrent with that of state courts. In other words, the party requesting interim, or conservatory relief may – even after the arbitral tribunal is constituted – freely choose whether to apply for such measures before

state courts *or* the arbitral tribunal. The state courts will, however, apply their own rules to the admissibility and availability of interim or conservatory measures.

Further to the recent amendment to Chapter 12 PILA, an arbitral tribunal with a seat abroad or a party to foreign arbitration proceedings may request a Swiss state court, at the place where the interim or conservatory measures are to be executed, to participate in the execution of those measures (Article 185a(1) PILA).

If any further assistance by a state court is required, whether in respect of interim or conservatory measures, or the procedure and taking of evidence generally, the court at the seat of the arbitral tribunal has jurisdiction (Article 185 PILA).

Arbitration award

The arbitral award shall be rendered according to the procedure and in the form agreed upon by the parties (Article 189(1) PILA). In the absence of such agreement, the award shall be rendered by a majority or, in the absence of such majority, by the chairperson alone (Article 189(2) PILA).

The award must be in writing, set forth the reasons on which it is based, and be dated and signed. The signature of the chairperson suffices (Article 189(2) PILA). The arbitral tribunal may grant damages, relief for specific performance as well as interim or conservatory and declaratory relief.

Chapter 12 PILA is silent on the admissibility of dissenting opinions. The Swiss Supreme Court has ruled that, where the parties have not agreed to the contrary, the majority of the arbitral tribunal may decide upon whether and how to communicate a dissenting opinion to the parties. A dissenting opinion does not form part of the award itself, whether or not it has been formally incorporated into it, such that it remains an independent opinion with no legal effect.[6]

Swiss arbitration law does not set a time limit within which the arbitral tribunal must render its award. However, if the parties and the arbitrator have agreed on a specific time limit for the rendering of the award, this agreement is binding on the parties and the arbitrator. The failure of an arbitrator to render the award within the agreed timeframe may give rise to a ground for challenge.

The arbitral tribunal will also render a decision on the costs of the arbitration and their allocation (even if Swiss arbitration law contains no specific provision to that effect). The items which are part of the arbitration costs and the allocation of the costs between the parties are to be determined in accordance with the parties' agreement (directly or by reference to any agreed arbitration rules). Absent an agreement between the parties, these issues will be determined by the arbitral tribunal, which enjoys a broad discretion in this respect.

Unless otherwise agreed by the parties, either party may apply to the arbitral tribunal, within 30 days of the communication of the award, for corrections, explanations or additions to the award. The arbitral tribunal may also make corrections, explanations or additions on its own motion within the same time limit (Article 189a(1) PILA). An application for corrections, explanations or additions does not affect the time limits for challenging the award, although a new period applies in relation to the corrected, explained or supplemented portions of the award (Article 189a(2) PILA).

Challenge of the arbitration award

International arbitral awards, whether final, partial or interim, may only be set aside on limited grounds (Articles 190(2) and (3) PILA). The setting aside proceedings are brought

directly before the Swiss Supreme Court (Article 191 PILA), Switzerland's highest court. This remedy is not an appeal, as the Swiss Supreme Court does not review the factual findings of the arbitral tribunal. For the setting aside application to be admissible, the applicant must have standing to challenge the award (Article 76(1) Supreme Court Act) by having either:

- participated, or been precluded from participating, in the arbitration; or
- been directly affected by the award and having an interest worthy of protection.

The grounds upon which an international arbitral award may be set aside in Switzerland are limited to the following (Articles 190(2)(a) to 190(2)(e) PILA):

- the arbitral tribunal was irregularly constituted, or a sole arbitrator was improperly appointed;
- there is a wrong decision on jurisdiction;
- the arbitral tribunal ruled beyond the claims submitted to it, or failed to decide on the claims;
- there is a violation of the right to be heard or the principle of equal treatment of the parties; or
- the award is incompatible with public policy.

Interim awards can be challenged only on the first two grounds set out above (Articles 190(2)(a), 190(2)(b) and 190(3) PILA).

A full application to set aside the award must be filed within 30 days of the notification of the award (Article 190(4) PILA). This time limit cannot be extended. The Swiss Supreme Court typically renders its decision on the setting aside application within six to eight months. Parties are only exceptionally granted a second exchange of submissions or the right to present oral arguments.

One of the key changes introduced by the recent revision of Chapter 12 PILA is that parties may now submit setting aside applications not only in one of the official Swiss languages (*i.e.,* French, German or Italian), but also in English (Article 77 (2*bis*) Supreme Court Act).

There is no automatic stay of enforcement of an international arbitral award pending the decision on the setting aside application (Article 103(1) Supreme Court Act), although a stay of enforcement may be granted in exceptional cases. The party requesting the stay must demonstrate that:

- the immediate enforcement of the award exposes that party to serious and irreparable harm in its legitimate interests; and
- the challenge itself has a very strong *prima facie* chance of success.

If the Swiss Supreme Court sets aside an international arbitral award, it may only annul the challenged award and remand the case to the same arbitral tribunal for the rendering of a new award (so-called "cassatory" nature of the action for annulment); however, it does not issue its own decision on the merits.

The threshold for the setting aside of an award rendered in Switzerland is extremely high, as confirmed by the low number of cases which resulted in the complete or partial setting aside of the award.[7]

If neither party has its domicile, place of habitual residence, or place of business in Switzerland, it may, by a clear, unambiguous and express declaration in the arbitration agreement or in a subsequent written agreement, waive the right to challenge the award (in whole or in part) (Article 192(1) PILA). The Swiss Supreme Court has held that this waiver is not applicable in sports arbitration.[8]

Parties also have the possibility to seek a revision of an arbitral award in certain exceptional circumstances. Revision is an extraordinary means of correcting an award which is final and binding and is only rarely granted. The grounds for revision of an arbitral award are limited and include, in particular, the following (Article 190a PILA):

- a party has subsequently discovered material facts or decisive evidence on which it was unable to rely in the arbitration proceedings;
- the outcome of the award has been influenced by a criminal offence; and/or
- circumstances give rise to a legitimate doubt as to a member of the arbitral tribunal's independence or impartiality which only came to light after conclusion of the arbitration proceedings.

Enforcement of the arbitration award

An international arbitral award rendered by an arbitral tribunal seated in Switzerland is final and binding (Article 190(1) PILA) and has the same legal effect as a final decision by a state court. As a result, it is automatically enforceable throughout Switzerland.

The recognition and enforcement of a foreign arbitral award in Switzerland is governed by the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958 (Article 194 PILA). A party applying for recognition or enforcement of a foreign award in Switzerland must include with its application the original or a copy of the arbitral award and arbitration agreement, together with any translations into the official language of the place at which enforcement is sought (French, German or Italian) (Article IV of the New York Convention). In practice, Swiss state courts take a liberal, pragmatic and pro-enforcement approach to the New York Convention and will only insist upon strict compliance with the form requirements regarding authentication and certification if the authenticity of the documents submitted with the application is disputed. Swiss state courts will usually not insist upon compliance with the translation requirement if the documents are in English.

Once Swiss state courts are satisfied that the requirements of Article IV of the New York Convention are met, recognition and enforcement will only be denied upon one of the limited grounds listed in Article V of the New York Convention. These grounds can be summarised as follows:

- party incapacity or invalidity of the arbitration agreement (Article V(1)(a));
- no proper notice of the appointment of the arbitrator or the proceedings or party otherwise unable to present its case (Article V(1)(b));
- the award of the arbitral tribunal is on matters beyond or outside of the scope of the arbitration (Article V(1)(c));
- irregular composition of the arbitral tribunal or procedure contrary to the parties' agreement or, in the absence of such agreement, of the laws applicable at the seat of the arbitration (Article V(1)(d));
- the award is not binding pursuant to the laws applicable at the seat of the arbitration or set aside at the seat (Article V(1)(e));
- non-arbitrability of the dispute (Article V(2)(a)); and
- the award is contrary to the public policy of the country in which its recognition or enforcement is sought (Article V(2)(b)).

In Switzerland, the threshold for successfully resisting recognition and enforcement of a foreign arbitral award on the basis of Article V of the New York Convention is extremely high and will only be met in exceptional circumstances.

Investment arbitration

According to the International Monetary Fund, Switzerland is the ninth largest outward direct investor as at the end of 2020.[9] As one of the world's largest capital exporters, it is in Switzerland's interest to create favourable conditions for foreign direct investment.

Switzerland has been a party to the Washington Convention for the Settlement of Investment Disputes Between States and Nationals of Other States (also known as the ICSID Convention) since 1968 and to the Energy Charter Treaty since 1998. For the Swiss government, transparency is fundamental to the effectiveness and acceptance of investor-state dispute settlement proceedings.[10] Switzerland therefore had an active role in the development of the UNCITRAL Rules on Transparency and ratified the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (also known as the Mauritius Convention), which entered into force on 18 October 2017. Having signed 112 bilateral investment treaties (BITs),[11] of which 111 are currently in force,[12] Switzerland has one of the largest BIT networks in the world. Recognising the need for reform in certain areas, Switzerland has continued to modify its treaty practice in recent years.

A Swiss seat is frequently chosen for investment-treaty arbitration outside of the institutional arbitration proceedings of ICSID. Therefore, such disputes are increasingly subject to setting aside procedures before the Swiss Supreme Court.

In the last 20 years, the Swiss Supreme Court has heard approximately 13 set aside applications in investment treaty arbitration proceedings.[13] In 2020, the Swiss Supreme Court for the first – and so far only – time set aside an arbitral award arising from an investment treaty arbitration, finding that the arbitral tribunal had wrongly declined jurisdiction over the dispute on the basis of a misapplication of the BIT at hand.[14]

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Endnotes

1. Report PILA 2018, BBl 2018 7163, available at: <https://fedlex.data.admin.ch/eli/fga/2018/2548> (last accessed 15/02/2022).
2. Decision of the Swiss Supreme Court 142 III 239 (4A_84/2015), 18 February 2016.
3. Decision of the Swiss Supreme Court 4A_606/2013, 2 September 2014, para. 6.2.1.
4. Decision of the Swiss Supreme Court 4A_709/2014, 21 May 2015, para. 3.3.2.
5. Decision of the Swiss Supreme Court 142 III 521 (4A_386/2015), 7 September 2016, para. 3.1.2.
6. Decision of the Swiss Supreme Court 4A_322/2015, 27 June 2016, para. 2.2.1.
7. The overall success rate of setting-aside applications before the Court is around 7%: see F. Dasser, P. Wójtowicz, Challenges of Swiss Arbitral Awards – Updated Statistical Data as of 2017, in ASA Bull. 2/2018, p. 284.
8. Decision of the Swiss Supreme Court 133 III 235, 22 March 2007, paras. 4.3-4.4.
9. IMF, Outward Direct Investment Positions (Top 20 Counterpart Economies), as of the end of 2020, available at: <https://data.imf.org/regular.aspx?key=61227424> (last accessed 16/02/2022).
10. Report on Foreign Economic Policy 2017, BBl 2018 821, available at: <https://www.fedlex.admin.ch/eli/fga/2018/287/de> (last accessed 15/02/2022), p. 843.
11. An overview of all Swiss BITs can be found on the website of the State Secretariat for Economic Affairs (SECO), available at: <https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/

Internationale_Investitionen/Vertragspolitik_der_Schweiz/overview-of-bits.html> (last accessed 15/02/2022).

12. *Ibid*; see also UNCTAD, Investment Policy Hub, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/by-economy> (last accessed 22/02/2022).
13. Five setting-aside applications were brought between 2000 and 2014, whereas eight setting-aside applications were brought against decisions rendered beween 2015 and 2019: see B. Berger, Die Schweiz als Schiedsort für Investitionsstreitigkeiten – Erkenntnisse aus der neueren Rechtsprechung des Bundesgerichts, in ASA Bull. 1/2020, p. 32.
14. Decision of the Swiss Supreme Court 146 III 142, 25 March 2020 (Clorox vs. Venezuela). Specifically, the Swiss Supreme Court held that, by interpreting the BIT as requiring an investor to have acquired its investment through an "active" act of investing "for consideration", the arbitral tribunal in that case read a non-existent requirement into the treaty.

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