



Arbitration clauses in Switzerland

Flexible framework: Swiss law is decidedly arbitration-friendly and thus provides broad scope for arbitration agreements, while still protecting the integrity of the process and the reasonable expectations of the parties.

Form of the arbitration agreement: In order to prevent costly and unpredictable disputes about jurisdiction, an arbitration agreement must be made in writing, i.e. by any means of communication that permits it to be evidenced by a text ([article 178\(1\) of the Swiss Private International Law Act \(PILA\)](#)). A signature is not necessary and the form is also satisfied by an oral agreement with written confirmation by both parties.

Validity of the arbitration agreement: An arbitration agreement is already valid if it conforms to any of the following: (i) the law chosen by the parties for this agreement, or (ii) the law governing the subject-matter of the dispute, in particular the main contract, or (iii) Swiss law as *lex arbitri* ([article 178\(2\) PILA](#)). Under Swiss law, the following applies:

The necessary elements: An arbitration agreement needs to contain an agreement of the parties to submit their dispute to an arbitral tribunal and a description of the dispute or legal relationship that is to be covered by the arbitration agreement.

Optional elements: For practical purposes, particularly where it does not refer to a set of institutional rules, an agreement to arbitrate should also address a number of additional elements, in particular: (i) the seat of the arbitration, (ii) the number of arbitrators and the procedure for their appointment, and (iii) the language of the arbitration.

Interpretation of arbitration agreements: Under Swiss law, a two-step-method applies: The aim is primarily to determine the parties' common actual intent (subjective interpretation). Should no mutual intent of the parties as to the arbitration agreement be factually certain, the putative intent is to be ascertained as it could and should have been understood by the recipient according to the rules of good faith (objective interpretation). In the context of the objective interpretation, the following standards apply: According to well-established case law, the conclusion of an arbitration agreement may not be accepted lightly. Thus, a restrictive interpretation applies when examining whether an arbitration agreement has been concluded. However, once it has been established that the parties intended to derogate from state court jurisdiction, it will be assumed that they intended the arbitral tribunal to have broad jurisdiction, including over non-contractual but related claims.

Extension of arbitration clauses to third parties: As a rule, only the parties to the arbitration agreement are bound by it. However, that rule has several exceptions. In particular, an arbitration agreement also binds the legal successor, be it by universal succession or by assignment. In addition, an arbitration agreement may extend to a third party if the latter intervened in the conclusion or performance of the main contract in such a way that the party seeking the extension had legitimate reasons to assume that the third party intended to become a party to the contract with the arbitration clause contained therein.

Independence of an arbitration clause: An arbitration agreement is independent from the underlying contract and, in particular, survives the termination of such contract, thus providing the reliability that parties can expect from a dispute resolution clause.