Swiss Setting Aside Proceedings: Quick, Reliable, and Arbitration-Friendly

For a general overview over Swiss arbitration law, see Swiss Arbitration Law is Modern and Flexible.

Arbitral awards are directly enforceable in Switzerland: Arbitral awards have the same standing within Switzerland as domestic state court judgments and are directly enforceable. Setting aside proceedings to challenge the award do not, as a general rule, stay the enforceability of arbitral awards, although this may be granted upon request in exceptional cases. Abroad, arbitral awards rendered in Switzerland may be enforced under the New York Convention.

Limited grounds for challenge: Swiss arbitration law provides for very limited grounds upon which international arbitral awards may be challenged. These grounds, which reflect those set forth in the New York Convention, include: (i) improper constitution of the arbitral tribunal; (ii) incorrect decision on jurisdiction; (iii) award beyond the claims submitted or failing to decide all claims submitted; (iv) violation of a party's right to be heard or of its right to equal treatment; and (v) incompatibility of the award with international public policy. The parties are free to waive these grounds for challenge to the extent that none of them is domiciled in Switzerland.

The Supreme Court hears all challenges directly: All challenges to international arbitral awards rendered in Switzerland are heard by the Swiss Supreme Court directly, the highest Court in the country. No other courts have jurisdiction to hear such challenges.

The proceedings last an average of 6 months from the date of the award: The Swiss Supreme Court is known for its efficient case management. Statistical data confirms that the average duration of setting aside proceedings is roughly 6 months from the date of the award.

Simple and straightforward procedures: Proceedings before the Swiss Supreme Court are very streamlined. Challenges must be filed within 30 days in any of the official Swiss languages (German, French, and Italian). English documents (including the award) need not be translated. At least in practice, there is no taking of evidence and the arbitrators do not need to testify.

Limited costs of a challenge: The streamlined procedures prevent substantial legal costs as they are known from some other jurisdictions. Court costs and compensation for the legal costs of the winning party – calculated on the basis of a tariff with a cap on court costs – typically amount to less than 3% in case of a CHF 1 million dispute and 0.3% in case of a CHF 10 million dispute.

The Supreme Court is arbitration-friendly: The Supreme Court has an openly stated arbitration-friendly policy. It is reluctant to second-guess the decisions of the arbitrators, and intervenes mainly where the arbitrators wrongly decided on their jurisdiction or failed to safeguard the minimal standards of due process. Statistical data analyzing the Supreme Court's decisions show that less than 10% of challenges are successful.

Revision: In addition, for cases where the time limit for filing a challenge has lapsed, Swiss law provides for a further remedy, reconsideration or "revision", which may also lead to the setting aside of an arbitral award under very limited circumstances, mainly where the award was criminally obtained (e.g. through bribery) or where crucial new evidence in existence at the time the award was rendered is subsequently discovered. As with challenges, requests for revision of awards are brought directly before the Supreme Court.

