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Swiss Arbitration Association

Swiss Guide to Legal Research in International Arbitration

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Introduction

Legal research is part of a lawyer's daily routine. Thus, practitioners are not only presumed to be familiar with the relevant sources of authority, but also to execute effective research on a particular issue arising in international arbitration.

In the course of our own regular research activities we learnt that only very little information on the question of how to efficiently conduct legal research in international arbitration is available. In particular, those articles, guides and short treatises found on the matter generally appeared to address the interest of an Anglophone student body and readership.¹ Only very few contributions were found that originated in Europe.

In this guide, the reader finds not only details on how to locate the relevant legal authorities, but also some considerations on the specific characteristics of international arbitration and how these idiosyncrasies might influence the practitioners' approach towards the efficient conduct of legal research.

In a second step, the reader will be led through some of the most common "working tools" for practitioners, i.e. the forms, guides and legal authorities that are offered from various institutions and organizations and may be helpful when doing research in international arbitration.

In a third section specific information is compiled on legal research in international arbitration in Switzerland, referring to some of the most relevant legal authorities.²

Thereafter, in section four of this guide, some practical considerations for the presentation of legal research results to the arbitral tribunal will be addressed.

Finally, references for further information on legal research in international arbitration are provided in section five.

¹ It is therefore not surprising that one of the most helpful sources for the preparation of this guide was the book of S.I. STRONG, *Research and Practice in International Commercial Arbitration – Sources and Strategies*, Oxford University Press 2009.

² It is important to emphasize that the following compilations of legal sources and the lists of relevant authorities must not be understood as exhaustive. Rather, the sources indicated may be considered as a starting point for a more in-depth inquiry, providing for general information as well as more specific guidance on particular topics in the international arbitration practice.



I. Strategic Considerations When Doing Legal Research

1. EFFICIENCY

"Time is money!"³

Legal research must be done efficiently, whatever the area of law, and the required inquiry must be done in a timely and cost-efficient manner, whatever the research approach. Thus, it is understandable why general practitioners start with research methodologies they already know because these methodologies provide them with quick initial results they can use to conduct the rest of their research.

At some point during their law school careers, all law students learn how legal research should be conducted on a specific topic. This education and the routine will eventually determine what *prima facie* approach practitioners might automatically choose when doing research. In addition, the legal cultural background may have a bearing on the research method that practitioners apply.

However, a detailed inquiry in matters of international arbitration is unlike any other legal research in practice because of its specific idiosyncrasies, forcing arbitrators and counsel to be more flexible in their methods and more assiduous in conducting research.

2. PECULIARITIES OF INTERNATIONAL ARBITRATION

2.1. Confidentiality in International Arbitration

Confidentiality is one of the key features and benefits of commercial arbitration. Accordingly, the actors involved, i.e. the parties and the arbitrators or the arbitral institution itself, will usually not publish the arbitral award unless the parties explicitly agree to do so, which will likely not be in their interest.

A study performed under the auspices of the Swiss Arbitration Association (Association Suisse de l'Arbitrage, ASA) has shown that 73% of the major arbitral institutions would allow in their rules for a publication of the awards (subject to the consent of the parties or, at minimum, absent any objections by the parties).⁴ And the

³ Benjamin Franklin.

⁴ HOFBAUER/BURKHART/BANDER/TARI, "Survey on Scrutiny of Arbitral Institutions", p. 21 et seqq., in: Arbitral Institutions under Scrutiny, ASA Special Series No. 40, Habegger/Hochstrasser/Nater-Bass/Weber-Stecker (eds.), 2013.



remaining 27% of the arbitral institutions do not have specific provisions in their rules or did not express their position in the survey as to the possibility of publishing the awards.

However, despite this theoretically positive attitude towards publication of the awards, the actual practice of publishing awards differs considerably: Even though the number of arbitral awards published (e.g. in excerpts) in recent years has increased, only a small portion of all awards is made available to the public; this is even truer if one includes the awards in ad hoc arbitrations.

Some of the reasons for such limited access to valuable know-how may not only be the fundamental duty of confidentiality, but also the fact that an arbitral award has no precedential effects on any other arbitration proceeding.

Therefore, it is not surprising that it may be difficult to find case law in support of one's position. One has to defer to other sources of legal authority, such as monographs and treatises written by experienced arbitration practitioners, and sometimes be creative to find the needle in the haystack.

2.2. Elements of Civil Law and Common Law

Due to the nature of international arbitration, elements of common law and civil law can create tension between the legal cultural traditions that influence both the arbitration proceedings and the conduct of legal research.

For instance, arbitrators or counsels with a civil law background may be traditionally more inclined to substantiate their position with legal texts and the legal opinions of scholars (e.g. in commentaries, treatises and articles), while practitioners in common law jurisdictions may rather emphasize the importance of precedent case law.

Now, given these different approaches and the associated disparity of what may be considered decisive or at least persuasive in the different legal cultures, practitioners may want to take into account the duality and respect legal authorities from both civil law and common law jurisdictions when doing their research.

2.3. Legal Background of Arbitrators and the Counterparty

The same concern for the duality of the common law and the civil law tradition ought to be respected in the light of written or oral advocacy.



It is the profession and the task of counsels to convince the arbitral tribunal of their client's position. Thus, counsels ought to present that legal authority which is deemed most persuasive by the arbitrators, even though it may be different from the one they themselves find persuasive. Hence, counsels may want to adapt their research methodologies to the addressees.

To satisfy these different expectations of the arbitral tribunal, it may therefore often be advisable to do a little research into the arbitrators' backgrounds.

In general, however, it is better to abstain from an either-or approach or one research method only and try to strike a balance instead. Practitioners should refer to various legal authorities, such as case law and commentaries in support of their position, in order to find that middle ground that is likely to be considered persuasive by the entire arbitral tribunal.

And as a matter of fact, in the authors' experience this seems to be more and more the approach adopted by arbitration practitioners, thereby slowly obliterating the initial differences due to the duality of the common law and the civil law tradition.

3. DENSITY AND DEPTH OF LEGAL RESEARCH

The density and depth of legal authorities required in support of a counsel's submission may vary considerably, depending on the specific submission to be made. For instance, a Request for Arbitration (sometimes also referred to as "Notice of Arbitration") usually does not necessitate the amount of legal authority that may be required for a Statement of Claim, a Statement of Defense or other briefs to support a party's position.

Thus, depending on the submission to be filed and on the stage of the proceedings, counsels and arbitrators will adjust the conduct of legal research to the issues arising in the arbitration.



II. Legal Research in International Arbitration in General

1. FORM SUBMISSIONS / GUIDES

Some arbitral institutions provide for online form submissions (such as e.g. a form "notice of arbitration"/ "request of arbitration") in order to give some guidance to the users to efficiently initiate and/or conduct arbitration proceedings.

Other arbitral institutions do not provide for a form submission, however, they explain the initiation and the conduct of the arbitration proceedings on their websites or provide for a more comprehensive guide:

Arbitral Institution	Form submissions	Guides	Other
AAA-ICDR	Different forms available on www.icdr.org , section "Rules, Forms & Fees", such as e.g. ICDR Notice of Arbitration	ICDR Resource Guide to International Conflict Management Strategies: https://www.icdr.org/sites/default/files/document_repository/ICDR_Resource_Guide_for_International_Conflict_Management_Strategies_0.pdf	ICDR Guide to Drafting International Dispute Resolution Clauses: https://www.icdr.org/sites/default/files/document_repository/ICDR_Guide_Drafting_Clauses.pdf
HKIAC	-	-	http://www.hkiac.org/arbitration/process http://www.hkiac.org/arbitration/rules-practice-notes http://www.hkiac.org/arbitration/guidelines http://www.hkiac.org/arbitration/why-hong-kong/hong-kong-arbitration-faqs http://www.hkiac.org/arbitration/why-choose-hkiac/hkiac-administered-



			arbitration-faqs
ICC	-	<p>Effective Management of Arbitration – A Guide for In-House Counsel and Other Party Representatives, ICC (ed.) 2014;</p> <p>The Secretariat's Guide to ICC Arbitration, ICC (ed.) 2012;</p> <p>Controlling Time and Costs in Arbitration, ICC, 2012 (<i>particularly for arbitrators</i>)</p>	<p>https://iccwbo.org/dispute-resolution-services/arbitration/filing-a-request//</p> <p>Practice notes, forms, checklists: https://iccwbo.org/dispute-resolution-services/arbitration/practice-notes-forms-checklists/</p>
LCIA	-	-	<p>http://www.lcia.org/Dispute_Resolution_Services/LCIA_Arbitration.aspx</p> <p>http://www.lcia.org/frequently_asked_questions.aspx</p> <p>Guidance notes: http://www.lcia.org/ar-services/guidance-notes.aspx</p>
Milan	<p>All forms available under: http://www.camera-arbitrale.it/en/Arbitration/Forms.php?id=103;</p> <p>in particular the Request for Arbitration: http://www.camera-arbitrale.it/Documenti/arbitration_request.pdf.</p>	-	<p>https://www.camera-arbitrale.it/en/Arbitration/Start+your+arbitration.php?id=71</p>
SCC	-	Arbitrator's	http://www.sccinstituit



		Guidelines (containing the SCC Model Award): http://sccinstitute.com/media/171486/guidelines-january-2017.pdf	e.com/?id=23704; http://www.sccinstitute.com/dispute-resolution/arbitration/step-by-step-guide-to-arbitration/
SCAI	-	-	https://www.swissarbitration.org/Arbitration/Initiating-arbitration
SIAC	-	-	http://www.siac.org.sg/our-rules/practice-notes
VIAC	-	-	http://www.viac.eu/en/arbitration

Other Institutions, such as the DIS, do neither provide for form submissions nor for guides or other general information on the conduct of the arbitration proceedings on their website.

Different form submissions and other model documents, including form submissions drafted in view of a specific set of arbitration rules, are made available on the fee-based website of "Practical Law":

- <http://uk.practicallaw.com/practice/arbitration>

The "Practical Law" website is very resourceful and offers a variety of arbitration-related publications.

2. CATEGORIES OF LEGAL SOURCES

2.1. Conventions & Treaties

New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (1958):

- http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html
- <http://www.newyorkconvention.org/texts>
- <http://newyorkconvention1958.org/>



ICSID ("Washington") Convention (1965):

- <https://icsid.worldbank.org/en/Pages/icsiddocs/ICSID-Convention.aspx>

Other conventions and treaties relevant in international law and in international arbitration practice, such as e.g. the European Convention on International Commercial Arbitration (1961) or the Inter-American ("Panama-") Convention (1975) can be accessed under:

- <http://www.jus.uio.no/lm/en/html/arbitration.html> (respectively, indirectly also via www.lexmercatoria.org)
- <http://www.newyorkconvention.org/other-relevant-conventions>

2.2. National Laws (Selection)

The following list contains the national laws (*lex arbitri*) of the 36 OECD countries.

While some of these countries may have specific national laws governing domestic arbitration, in the following only the acts and regulations on international arbitration are listed:

Country	National Law	Link
Australia	Commonwealth, International Arbitration Act 1974	http://www.comlaw.gov.au/Details/C2011C00342
Austria	Zivilprozessordnung vom 1. August 1895: Sechster Teil, vierter Abschnitt § 577-618	http://www.viac.eu/en/materials/83-recht/gesetze/200-zpo-as-amended-2013
Belgium	Belgian Judicial Code Provisions of September 1, 2013: Chapter 6, Art. 1676-1722	http://www.cepani.be/en/arbitration/belgian-judicial-code-provisions
Canada	Commercial Arbitration Act (1985, c. 17 (2 nd Supp.))	http://laws-lois.justice.gc.ca/eng/acts/C-34.6/index.html
Chile	Codigo de Procidimiento Civil (CPC), Art. 628-644; Chilean International Commercial Arbitration	http://www.leychile.cl/Consulta/codigos_de_la_r_epublica



	Act	
Czech Republic	Act on Arbitral Proceedings and Enforcement of Arbitral Awards (the Arbitration Act) (No. 216/1994 Coll.)	http://www.kluwerarbitration.com/CommonUI/document.aspx?id=kli-ka-1421106-n; <i>(requires access/login to Kluwer Arbitration)</i>
Denmark	Danish Arbitration Act, 2005	http://voldgiftsinstituttet.dk/en/library/arbitration-act/
Estonia	Code of Civil Procedure, Part 14	https://www.riigiteataja.ee/en/eli/ee/513122013001/consolide/current
Finland	Arbitration Act (967/1992)	http://www.finlex.fi/fi/laki/kaannokset/1992/en19920967.pdf
France	French Code of Civil Procedure; Decree No. 2011-48 of January 13, 2011, reforming the law governing arbitration	http://www.jus.uio.no/lm/en/manifest/france.arbitration.code.of.civil.procedure.1981.html; http://www.iaiparis.com/pdf/FRENCH_LAW_ON_ARBITRATION.pdf;
Germany	Zivilprozessordnung vom 1. Januar 1998; Zehntes Buch § 1025-1066 ZPO	http://www.gesetze-im-internet.de/zpo/index.html
Greece	Code of Civil Procedure, Art. 867 ff. (GCCP); Greek Law on International Commercial Arbitration (GLICA)	https://www.uv.es/medarb/observatorio/leyes-arbitraje/europa-resto/grecia-ccp-domestic-arbitration.pdf
Hungary	Act LXXI of 1994 on Arbitration ("Arbitration Act")	http://www.mkik.hu/en/magyar-kereskedelmi-es-iparkamara/act-lxxi-of-1994-on-arbitration-2074
Iceland	Act No. 53/1989 on Contractual Arbitration	http://www.vi.is/files/act%20on%20contractual%20arbitration_849555187.pdf
Ireland	Arbitration Act 2010	http://www.irishstatutebook.ie/2010/en/act/pub/0001/index.html
Israel	Arbitration Law, 5728-1968	http://www.israelinsurancelaw.com/arbitration-law-1968/
Italy	Book IV, Title VIII of the Italian Code of Civil	http://www.jus.uio.no/lm/italy.arbitration/doc.h



	Procedure	tml
Japan	Arbitration Law (Law No.138 of 2003)	www.japan.kantei.go.jp/policy/sihou/arbitrationlaw.pdf
Latvia	Civil Procedures Law, Part D, Sections 486-537	http://www.at.gov.lv/en/resursi/likumi
Lithuania	Law on Commercial Arbitration	https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/35954312dcb311e6be918a531b2126ab?jfwid=-wd7z7zum0
Luxembourg	Nouveau code de procédure civile, Luxembourg, deuxième partie, livre III, titre I	http://legilux.public.lu/eli/etat/leg/code/procedure_civile/20170527
Mexico	Code of Commerce, Title VI Book V, Commercial Arbitration	http://www.ftaa-alca.org/busfac/comarb/Mexico/codco_s.asp
Netherlands	Dutch Code of Civil Procedure, Book 4	http://www.dutchcivillaw.com/civilprocedureleg.htm
New Zealand	Arbitration Act 1996, New Zealand	http://www.legislation.govt.nz/act/public/1996/0099/latest/DLM403277.html
Norway	Norwegian Arbitration Act of 2004, Civil Procedure Act (Chapter 32)	http://www.kluwarbitration.com/CommonUI/document.aspx?id=ipn31085 (requires access/login to Kluwer Arbitration)
Poland	Code Civil Procedure (Part Five, Chapter 1, Art. 1154)	http://sakig.pl/uploads/upfiles/pdf/kpc-ang.pdf
Portugal	Portuguese Voluntary Arbitration Law 2011; Law no. 63/2011	http://arbitragem.pt/legislacao/2011-12-14--lav/lav-english.pdf
Slovakia	The New Slovak Arbitration Act (No. 336/2014)	http://www.allenoverly.com/SiteCollectionDocuments/Arbitration_Act_Brochure_June_2015.PDF
Slovenia	Arbitration Act of April 25, 2008	http://www.sloarbitration.eu/Portals/0/Arbitrazno-pravo/Law%20on%20Arbitration%20of%20Slovenia.pdf



South Korea	Arbitration Act of 1966 (Act No. 1767)	http://www.kcab.or.kr/jsp/kcab_eng/law/law_01_ex.jsp
Spain	Act 11/2011, of May 20, reforming Act 60/2003, of December 23, on Arbitration	http://www.boe.es/buscar/doc.php?id=BOE-A-2011-8847 <i>in English:</i> http://www.tab.es/images/documents/normativa/reforma_ley_60-2003_eng.pdf
Sweden	Swedish Arbitration Act (SFS 1999:116)	http://www.sccinstitute.com/media/37089/the-swedish-arbitration-act.pdf
Switzerland	Swiss Private International Law Act (of 18 December 1987, 12 th Chapter)	https://www.swissarbitration.org/files/34/Swiss%20International%20Arbitration%20Law/IPRG_english.pdf http://www.arbitration-ch.org/pages/en/arbitration-in-switzerland/index.html
Turkey	International Arbitration Law (Law No. 4686 of 21 June 2001)	https://www.international-arbitration-attorney.com/wp-content/uploads/International-Arbitration-Law-Of-Turkey.pdf
United Kingdom	Arbitration Act 1996, Chapter 23	http://www.legislation.gov.uk/ukpga/1996/23/contents
United States	United States Code, Title 9 – Arbitration ("Federal Arbitration Act")	http://www.gpo.gov/fdsys/pkg/USCODE-2011-title9/html/USCODE-2011-title9.htm ; or http://www.law.cornell.edu/uscode/text/9
UNCITRAL Model Law	UNCITRAL Model Law on International Commercial Arbitration (1985, with amendments as adopted in 2006)	http://www.uncitral.org/uncitral/uncitral_texts/arbitration.html

Other websites can be helpful to find the legislation of specific countries. For instance: <http://www.jus.uio.no/lm/en/html/arbitration.html#174> as well as <http://www.worldlii.org/countries.html> contain links to a vast number of jurisdictions and their respective legislation on specific legal matters.

Note, however, "worldlii" remains a work in progress. Hence, for some jurisdictions, such as e.g. Switzerland or the United Kingdom, the database has not yet been established or finalized.



At this time, <http://www.kluwerarbitration.com/> still appears to be more complete with regard to the national laws on international arbitration.

Moreover, concerning general questions on the application and the content of specific provisions of the *lex arbitri* KluwerArbitration's new practice tool, i.e. "International Handbook Commercial Arbitration Compare Jurisdictions", provides for a helpful starting position for eventual further research.

2.3. Arbitral Rules (Selection)

Arbitral Rules	Links to Rules
AAA-ICDR	https://www.adr.org/Rules https://www.icdr.org/rules_forms_fees
DIS	http://www.dis-arb.de/en/16/rules/overview-id0
HKIAC	http://www.hkiac.org/arbitration/rules-practice-notes/administered-arbitration-rules
ICC	https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/
ICSID	https://icsid.worldbank.org/en/Pages/icsiddocs/ICSID-Convention-Arbitration-Rules.aspx
LCIA	http://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2014.aspx
Milan	http://www.camera-arbitrale.it/en/Arbitration/Arbitration+Rules.php?id=64
SCC	http://www.sccinstitute.com/dispute-resolution/rules/
SIAC	http://www.siac.org.sg/our-rules/rules
Swiss Rules	https://www.swissarbitration.org/Arbitration/Arbitration-Rules-and-Laws
UNCITRAL	http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2010Arbitration_rules.html
VIAC	http://www.viac.eu/en/arbitration/arbitration-rules-vienna



2.4. Arbitral Awards

Arbitral Institution	Database for awards	(specific) Journals
AAA-ICDR	-	Dispute Resolution Journal
DIS	-	German Arbitration Journal (<i>SchiedsVZ</i>); http://www.dis-arb.de/en/47/database/overview-id0
HKIAC	http://hkiac.org/ip-and-domain-name/domain-dispute-resolution/decisions (for domain name disputes only)	Asian Dispute Review
ICC	http://library.iccwbo.org/dr-awards.htm (extracts of awards only)	- ICC International Court of Arbitration Bulletin; - Collection of ICC Arbitral Awards
ICSID	https://icsid.worldbank.org/en/Pages/cases/AdvancedSearch.aspx	ICSID Review
LCIA	-	(<i>Arbitration International</i>)
Milan	http://www.camera-arbitrale.it/en/Studies+and+Documentation+Centre/Library/Arbitral+Awards.php?id=262	-
SCC	-	Stockholm International Arbitration Review (SIAR)
SIAC	-	Asian International Arbitration Journal (AIJ)
Swiss Chambers' Arbitration Institution	-	ASA Bulletin
VIAC	-	VIAC (ed.), Selected Arbitral Awards, vol. 1, 2015



Awards rendered in arbitration proceedings pursuant to the UNCITRAL Arbitration Rules are not published in a particular journal. Excerpts of these awards may be found in different journals, such as e.g.:

- Yearbook of Commercial Arbitration;
- Journal du Droit International;
- Cahiers de l'Arbitrage;
- German Arbitration Journal / SchiedsVZ

as well as, e.g., online under:

- www.kluwerarbitration.com
- www.arbitrationlaw.com
- www.westlaw.com

Arbitral awards as well as decisions regarding disputes between States are made available in hardcopy in the "*Reports of International Arbitral Awards*" ("*Recueil des sentences arbitrales*") by the Secretariat of the United Nations and the Registry of the International Court of Justice (see <http://legal.un.org/riaa/tables.shtml>).

2.5. Case Law

2.5.1. Conventions and Treaties

Decisions rendered by different state courts regarding the recognition and enforcement of arbitral awards under the NYC:

- <http://newyorkconvention1958.org/>
- <http://www.newyorkconvention.org/court-decisions>

IIAPP (International Investment Arbitration + Public Policy) database with a particular focus on investment treaty cases:

- <http://www.iiapp.org/>



2.5.2. CLOUT: Decisions on the UNCITRAL Texts

On the official UNCITRAL webpage practitioners will generally find decisions on most of the UNCITRAL texts ("CLOUT", the name of the database stands for "*Case Law on Uncitral Texts*").

- http://www.uncitral.org/uncitral/en/case_law.html

While the NYC is also a text issued by UNCITRAL, we consider the previously cited websites (see section 2.5.1 above) more helpful, when doing research for case law in application of the New York Convention.

Moreover, the CLOUT database does not include awards rendered in application of the UNCITRAL Arbitration Rules.

The database is limited to – but at the same time very helpful to find – case law on the CISG, the Model Law on International Commercial Arbitration as well as e.g. the Model Law on Electronic Commerce and the Model Law on Cross-Border Insolvency.

2.5.3. Decision rendered in application of the national *lex arbitri*

Today, most governments provide for a database where the decisions of the state courts can be retrieved. However, many jurisdictions do not make their decisions available to the public in English language.

Some arbitral institutions or arbitration practitioners regularly translate interesting and relevant decisions on arbitration, which can most likely be found in the leading journals on international arbitration and sometimes extracts with comments in online newsletters of law firms. Though, these privately translated (and commented) decisions will usually be published with some delay.

On the "Swedish Arbitration Portal" the SCC, together with Swedish arbitration practitioners, provides for a translation of the pertinent Swedish court decision on arbitration issues:

- <https://www.arbitration.sccinstitute.com/Swedish-Arbitration-Portal/start/>

Regarding case law on international arbitration in Switzerland, in particular, for a thorough research the official database of jurisprudence of the Swiss Federal Supreme Court must be consulted:

- www.bger.ch



The effective use of the Swiss Federal Supreme Court's homepage – although requiring the knowledge of the German, French and/or Italian language and, thus, not necessarily ideal for the international arbitration community – is of particular relevance because only a small part of the Federal Supreme Court's case law on international arbitration in Switzerland (if any at all) is translated into English. For instance, English translations of a few decisions rendered by the Swiss Federal Supreme Court can be retrieved from:

- <http://www.swissarbitrationdecisions.com>

Others may be published in journals such as the ASA Bulletin.

A very helpful summary of (and commentary to) arbitration decisions rendered by the Swiss Federal Supreme Court is made available via the Arbitration Case Digest, i.e. Schellenberg Wittmer's online newsletter' service, and the Arbitration Newsletter Switzerland of Thouvenin Rechtsanwälte.

In any event, a great number of the available court decisions on the application of the respective national law will be found in hard copy in the Yearbook Commercial Arbitration and online under:

- <http://www.kluwarbitration.com/>

2.6. Treatises, Monographs & Legal Articles

There is significant number of treatises, monographs and legal articles on the subject of international arbitration. Some of the major works and publications are featured on online sources, such as e.g. <http://www.kluwarbitration.com/books> or www.arbitrationlaw.com.

In order to get a better idea of the considerable volume of books on the subject it may also be helpful to consider bibliographies, e.g. made available by distinct universities or arbitral institutions. For instance, a quick online search on the common internet portal of the libraries of the University of Zurich and the Central Library of Zurich reveals an inventory of more than 2000 books related to arbitration available to the public.

- <http://www.recherche-portal.ch/zbz/action/search.do?vid=ZAD>

2.6.1. Treatises and Monographs on International Commercial Arbitration

Numerous treatises and monographs provide for a general overview or an in depth analysis on the international commercial arbitration practice. The books indicated in



the following (in alphabetic order) are more recent standard treatises, which are helpful when doing a first research on a particular issue in international arbitration:

- ARROYO (ed.), Arbitration in Switzerland - The Practitioner's Guide, 2nd ed. 2018
- BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 3rd ed. 2015
- BLACKABY/PARTASIDES et al., Redfern & Hunter on International Arbitration, 6th ed. 2015
- BORN, International Commercial Arbitration - Vol. I-III, 2nd ed. 2014
- BÜHLER/WEBSTER, Handbook of ICC Arbitration, 4th ed. 2018
- GAILLARD/DI PIETRO, Enforcement of Arbitration Agreements and International Arbitral Awards - The New York Convention in Practice, 2008
- GEISINGER/VOSER, International Arbitration in Switzerland - A Handbook for Practitioners, 2nd ed. 2013
- GIRSBERGER/VOSER, International Arbitration in Switzerland, 3rd ed. 2016
- HANOTIAU, Complex Arbitrations, 2006
- HORVATH/WILSKE, Guerrilla Tactics in International Arbitration, 2013
- KARRER, Introduction to International Arbitration Practice: 1001 Questions and Answers, 2014
- KAUFMANN-KOHLER/RIGOZZI, International Arbitration: Law and Practice in Switzerland, 2015
- KAUFMANN-KOHLER/STUCKI, International Arbitration in Switzerland: A Handbook for Practitioners, 2004
- KRONKE/NACIMIENTO et al., Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention, 2010
- MISTELIS/BREKOULAKIS, Arbitrability, 2009
- NEWMAN/HILL, The Leading Arbitrators' Guide to International Arbitration, 2004
- PFISTERER/SCHNYDER, International Arbitration in Switzerland - in a nutshell, 2012
- POUDRET/BESSON, Comparative Law of International Arbitration, 2007
- SCHÄFER/VERBIST/IMHOOS, ICC Arbitration in Practice, 2nd ed. 2016



- SMEUREANU, Confidentiality in International Commercial Arbitration, 2011
- SMIT/PECHOTA, International Commercial Arbitration and the Courts, 4th ed. 2004
- WAINCYMER, Procedure and Evidence in International Arbitration, 2012
- WOLFF (ed.), The New York Convention: A Commentary, 2012

Some older works may still also be helpful:

- BERGER, International Economic Arbitration, 1993
- BERTI/HONSELL/VOGT/SCHNYDER, International Arbitration in Switzerland, 2000
- CRAIG/PARK/PAULSSON, ICC International Chamber of Commerce Arbitration, 3rd ed. 2000
- FOUCHARD/GAILLARD/GOLDMAN on International Commercial Arbitration, 1999
- FRICK, Arbitration and Complex International Contracts, 2001
- LEW/MISTELIS/KRÖLL, Comparative International Commercial Arbitration, 2003
- VAN DEN BERG, The New York Arbitration Convention of 1958, 1981

2.6.2. Treatises and Monographs on the UNCITRAL Model Law

A comprehensive bibliography of writings related to the work of UNCITRAL can be found under:

- http://www.uncitral.org/uncitral/publications/bibliography_consolidated.html

Further treatises and monographs on arbitration under the UNCITRAL Model Law are e.g.:

- BINDER, International Commercial Arbitration and Conciliation in UNCITRAL Model Law Jurisdictions, 2010
- BROCHES, Commentary on the UNCITRAL Model Law on International Commercial Arbitration, 1990



- HOLTZMANN/NEUHAUS, A guide to the UNCITRAL Model Law on International Commercial Arbitration: legislative history and commentary, 1989

2.6.3. Treatises and Monographs on Arbitration in Specific Jurisdictions

There are numerous commentaries analyzing the arbitration practice in a specific jurisdiction. Some of these treatises are cited below.

Some legal directories or other publications compile different national reports, respectively consist of various chapters on the arbitration practice in a specific jurisdiction, such as e.g.:

- ARBITRATION WORLD, 5th ed. 2015
- CHAMBERS COUNTRY PRACTICE GUIDES - International Arbitration, 2019
- GLOBAL LEGAL INSIGHTS - International Arbitration, 4th ed. 2018
- MISTELIS/SHORE/RIBEIRO (eds.), World Arbitration Reporter, 2nd ed. 2010
- THE INTERNATIONAL ARBITRATION REVIEW, 9th ed., 2018
- WEIGAND (ed.), Practitioner's Handbook on International Commercial Arbitration, 2nd ed. 2009

Jurisdiction	Treatise / Monograph	Further information
Austria	CZERNICH/DIXLER-HÜBNER/SCHAUER (eds.), Handbuch Schiedsrecht, 2018 TORGLER et al (eds.), Handbuch Schiedsgerichtsbarkeit, Deutschland – Österreich – Schweiz, 2 nd ed., 2017 HEIDER et al., Dispute Resolution in Austria, 2015; ZEILER, Schiedsverfahren - §§ 577-618 idF des SchiedsRÄG 2013, 2 nd ed. 2014; LIEBSCHER et al., Schiedsverfahrensrecht, vol. I, 2011 RIEGLER et al., Arbitration Law of	http://www.viac.eu/en/service/publications http://www.viac.eu/images/documents/Arbitration_in_Austria_DDr_Melis_Yearbook_Commercial_Arbitration_1.pdf http://www.ibanet.org/Document/Default.aspx?DocumentUid=53134AEA-7488-4A8D-8C9B-A2E2ECAA0396



	Austria: Practice and Procedure, 2007.	
France	CARDUCCI, Arbitration in France, 2015; DELVOLVÉ et al., French Arbitration Law and Practice, 2009	http://www.ibanet.org/Document/Default.aspx?DocumentUid=D44F7671-12B3-4FE5-8B59-9203D7EAD2AD
Germany	KREINDLER et al., Commercial Arbitration in Germany, 2016; BÖCKSTIEGEL/KRÖLL, Arbitration in Germany, The Model Law in Practice, 2 nd ed. 2014	http://www.ibanet.org/Document/Default.aspx?DocumentUid=72111D60-6585-412C-B239-189ABF22108F
Hong Kong	MA/Brock (eds.), Arbitration in Hong Kong: A Practical Guide, 4 th ed. 2017	https://www.ibanet.org/Document/Default.aspx?DocumentUid=8B5C05B7-D2F0-4F2F-8418-1F3C32537343 http://www.deacons.com.hk/assets/Images/News%20and%20Insights/Publication/2014/201405_GuidetoArbitrationInHK_newVI.pdf
Italy	EMANUELE et al., Selected Issues in International Arbitration: the Italian Perspective, 2014; BERNARDINI, The Italian Law on Arbitration, 1998	http://www.ibanet.org/Document/Default.aspx?DocumentUid=1607A591-F647-4231-8664-0C8B7C1FE397
Singapore	MOSER/CHOONG. (eds.), Asia Arbitration Handbook, 2011	http://www.ibanet.org/Document/Default.aspx?DocumentUid=21CE7804-1003-4E5C-965C-7BAE72749128
Sweden	FRANKE/MAGNUSSON et al., International Arbitration in Sweden – A Practitioner’s Guide, 2013; HOBÉR, International Commercial Arbitration in Sweden, 2011; ANDERSSON et al., Arbitration in Sweden, 2011	http://www.ibanet.org/Document/Default.aspx?DocumentUid=323447B0-3A0B-4D25-B53C-206E55E35F51
Switzerland	ARROYO (ed.), Arbitration in Switzerland: The Practitioner's	https://www.swissarbitration.org/Arbitration/Publicati



	<p>Guide, 2nd ed. 2018;</p> <p>GIRSBERGER/VOSER, International Arbitration in Switzerland, 3rd ed. 2016;</p> <p>BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 3rd ed. 2015;</p> <p>KAUFMANN-KOHLER/RIGOZZI, International Arbitration: Law and Practice in Switzerland, 3rd ed. 2015;</p> <p>GEISINGER/VOSER, International Arbitration in Switzerland: A Handbook for Practitioners, 2nd ed. 2013</p>	<p>ons http://www.ibanet.org/Document/Default.aspx?DocumentUid=8DA26206-5B7E-49A5-A69F-4BEF37D6408A</p>
United Kingdom	<p>LANDBRECHT/ANDREWS, Schiedsverfahren und Mediation in England, 2015;</p> <p>SUTTON et al. (eds.), Russell on Arbitration, 24th ed. 2015;</p> <p>LEW et al. (eds.), Arbitration in England, with chapters on Scotland and Ireland, 2013</p>	<p>http://www.ibanet.org/Document/Default.aspx?DocumentUid=D49BD82B-83AA-47C3-A238-F7E165D03891</p>
United States	<p>BORN, International Arbitration: Cases and Materials, 2nd ed. 2015;</p> <p>AAA (ed.), AAA Handbook on Commercial Arbitration, 3rd ed. 2016;</p> <p>VON MEHREN et al., American Arbitration: Principles and Practice, 2009</p>	<p>http://www.ibanet.org/Document/Default.aspx?DocumentUid=939CE0D4-8D8A-4350-81D7-B7FEFE923C11</p>

2.6.4. Treatises and Monographs on Arbitral Rules

Similar to publications on the arbitration practice in specific jurisdictions, there are numerous treatises and commentaries regarding the different institutional arbitration rules and their respective application in practice.

The book "*Institutional Arbitration*" (Schütze (ed.), 2013) provides for an article-by-article commentary on the provisions of 14 different sets of institutional arbitral rules,



such as the AAA, CIETAC, DIS, ICC, ICSID, LCIA, SCC, SIAC, Swiss Rules, UNCITRAL Rules and VIAC Rules.

Also, the treatise "*Comparison of International Arbitration Rules*" by Simpson Thacher & Bartlett LLP (4th ed. 2013) is helpful to quickly access information on the application of and the differences of the various institutional arbitration rules.

Moreover, another helpful practice tool to compare various institutional arbitration rules and the respective practice is made available on KluwerArbitration under the category of "*Practice tools*" and the subcategory "*Institutions' procedural rules*".

Regarding treatises and specific commentaries on the individual sets of institutional arbitration rules we found the following sources:

Arbitral Rules	Commentary
AAA-ICDR	GUSY et al, A Guide to the ICDR International Arbitration Rules, 2011
DIS	BÖCKSTIEGEL/KRÖLL, Arbitration in Germany: The Model Law in Practice, 2 nd ed. 2014; MENNO, Internationale Handelsschiedsgerichtsbarkeit - Kommentar zu den Schiedsverfahrensordnungen ICC - DIS - Wiener Regeln - UNCITRAL - LCIA, 2003
HKIAC	MOSER/BAO (eds.), A Guide to the HKIAC Arbitration Rules, 2017
ICC	BÜHLER/WEBSTER, Handbook of ICC Arbitration, 3 rd ed. 2014; FRY/GREENBERG/MAZZA, The Secretariat's Guide to ICC Arbitration, 2012; DERAINS/SCHWARTZ, A Guide to ICC Rules of Arbitration, 2005
ICSID	REED/PAULSSON/Blackaby, Guide to ICSID Arbitration, 2 nd ed. 2010
LCIA	SCHERER/RICHMAN/GERBAY; Arbitrating under the 2014 LCIA Rules, 2015; TURNER/MOHTASHAMI, A Guide to the LCIA Arbitration Rules, 2009
Milan Rules	DRAETTA/Luzzatto (eds.), The Chamber of Arbitration of Milan



	Rules: a Commentary, 2012
SCC	SCHÜTZE (ed.), Institutional Arbitration, 2013
SIAC	CHONG/MANGAN/LINGARD, A Guide to the SIAC Arbitration Rules, 2 nd ed. 2018; LexisNexis (ed.), SIAC Rules: An Annotation, 2014
Swiss Rules	ZUBERBÜHLER/MÜLLER/HABEGGER, Swiss Rules of International Arbitration, 2 nd ed. 2013
UNCITRAL	BINDER, Analytical Commentary to the UNCITRAL Arbitration Rules, 2013; CARON/CAPLAN, The UNCITRAL Arbitration Rules: A Commentary, 2 nd ed. 2013
VIAC	SCHWARZ/KONRAD (eds.), The Vienna Rules: A Commentary on International Arbitration in Austria, 2009; HEIDER/FREMUTH-WOLF, Vienna International Arbitral Centre, in: Arbitration World International Series, 5 th ed. 2015, (available under: http://www.viac.eu/images/VIAC_author_pdf.pdf); VIAC (ed.), Handbook Vienna Rules - A Practitioner's Guide, 2014

2.7. Legal Articles

It goes without saying that there is an infinite sum of legal articles on the subject of international arbitration.

Instead of attempting to compile a list of the most relevant legal articles – a task which is simply impossible – we find it more efficient to settle for an exemplary list of online sources providing access to numerous legal articles:

- www.kluwarbitration.com
- www.westlaw.com
- www.lexisnexis.com
- www.arbitrationlaw.com
- www.international-commercial-arbitration.com
- www.heinonline.org



2.8. Soft Law

"Soft Law", such as e.g. the IBA Rules on the Taking of Evidence, is per definition not binding on the parties in dispute, unless they agree to its application. Absent an express agreement by the parties to apply soft law to their case, it is subject to debate to what extent such non-binding provisions may be applied and used as authority.

In international contract law there appears to be a growing tendency to consider the UNIDROIT (Lando) Principles as well as the Principles or European Contract Law (PECL) as persuasive authority.

Similarly, the publications issued by the International Bar Association (IBA) have gained acceptance in the international arbitration practice and may be considered as „best practice“ in international arbitration (available under: www.ibanet.org):

- Guidelines on Conflicts of Interest in International Arbitration (2014)
- Guidelines on Party Representation in International Arbitration (2013)
- Rules on the Taking of Evidence in international Arbitration (2010)
- Guidelines for Drafting International Arbitration Clauses (2010)

In particular, the IBA Guidelines on Conflicts of Interest in International Arbitration as well as the IBA Rules on the Taking of Evidence have proved to be valuable for both arbitration practitioners as well as state courts. For instance, when seized with an action for setting aside the award on the basis on a wrong composition of the arbitral tribunal due to bias of an arbitrator the Swiss Federal Tribunal regularly takes the IBA Guidelines on Conflicts of Interest in International Arbitration into account, referring to them as a „valuable working tool“. Similarly, also in the UK or the United States (2nd and 9th Cir.) the IBA Rules/Guidelines as well as other soft law (such as e.g. the ABA Code of Ethics) has been used as persuasive authority.



III. Legal Research on International Arbitration in Switzerland

In addition to the afore-cited legal authorities, practitioners working in the field of international arbitration in Switzerland ought to be familiar with further, more Swiss arbitration practice specific sources.

The Swiss Chambers' Arbitration Institutions has published such a (non-exhaustive) list of publications regarding the international arbitration practice in Switzerland:

- <https://www.swissarbitration.org/Arbitration/Publications>

Furthermore, general information on arbitration in Switzerland is e.g. made available by the Swiss Arbitration Association on:

- <http://www.arbitration-ch.org/pages/en/arbitration-in-switzerland/index.html>

1. CONVENTIONS AND TREATIES

With regard to the relevant conventions and treaties, in particular regarding the NYC, the respective case law and the relevant treatises on the same, reference can be made to the sources listed under headings II.2.1 and II.2.5.1.

2. NATIONAL LAW – SWISS PRIVATE INTERNATIONAL LAW ACT

An English version of the 12th Chapter of the SPILA can be found under:

- <https://www.swissarbitration.org/Arbitration/Arbitration-Rules-and-Laws>
- <http://www.arbitration-ch.org/pages/en/arbitration-in-switzerland/index.html>

The legal text of the SPILA in its original languages (German, French and Italian) is accessible on the official homepage of the Swiss Federal Government (<https://www.admin.ch/opc/de/classified-compilation/19870312/index.html>).

3. ARBITRAL RULES

Concerning the arbitral rules predominantly used in the Swiss international arbitration practice and the respective commentaries on the rules' application, reference can be made to the sources listed under headings II.2.3 and II.2.6.4.



4. ARBITRAL AWARDS

Arbitral awards issued under the Swiss Rules of International Arbitration will primarily be published in excerpts in the ASA Bulletin, as well as in the German Arbitration Journal/SchiedsVZ. Other journals may also feature excerpts of Swiss arbitral awards, however, not on a regular basis. As seen, arbitral awards published in the ASA Bulletin can also be accessed online on the database of KluwerArbitration.

5. CASE LAW

Case law on the application of the 12th Chapter of the SPILA can be searched in the original languages of the decision on the database of jurisprudence of the Swiss Federal Supreme Court (www.bger.ch). Over 250 cases since 2008 have been translated into English and can be found under <http://www.swissarbitrationdecisions.com/>.

With regard to hard copy materials featuring excerpts and discussions of decisions on international arbitration in Switzerland, along with the ASA Bulletin special reference is made to the publication series "*New Developments in International Commercial Arbitration*" by MÜLLER/RIGOZZI (eds.; published annually since 2007) as well as to the work on the jurisprudence of the Swiss Federal Supreme Court by MÜLLER, i.e. "*Swiss Case Law in International Arbitration*" (2010).

Besides the case law published in journals or compilations, further decisions of the Swiss Federal Supreme Court are regularly summarized in English and featured on Kluwer Arbitration by the Swiss representatives on the ITA Board of Reporters (currently Dr. Georg von Segesser).

6. TREATISES, MONOGRAPHS AND LEGAL ARTICLES

Many of the treatises and monographs cited under heading II.2.6.1 include references, sections or entire chapters on the arbitration practice in Switzerland. Those publications are, thus, also to be considered in the context of a more specific research on arbitration in Switzerland.

The 3rd part of the new Swiss Code of Civil Procedure (CCP, arts. 353 et seqq.) governs domestic arbitration in Switzerland. The legislative history of the CCP demonstrates that the respective provisions have been drafted based on the 12th Chapter of the SPILA, taking into account the relevant case law, the concerns raised in practice over years and adapting the provisions to modern trends in international arbitration. Accordingly, the numerous treatises and commentaries on



the CCP, which have been published in the wake of its entry into force, are a helpful source also for international arbitration in Switzerland.

The following list (in alphabetical sequence of the author's or the editor's name) contains a selection of relevant monographs, treatises and commentaries regularly used for research on international arbitration in Switzerland:

- ARROYO (ed.), Arbitration in Switzerland - The Practitioner's Guide, 2nd ed. 2018
- BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 3rd ed. 2015
- BERNARDINI/BESSON et al., Liber Amicorum - Claude Reymond - Autour de l'Arbitrage, 2004
- BOOG et al, Berner Kommentar ZPO: Art. 353 - 399 ZPO, Art. 407 ZPO, Band III, 2014
- COURVOISIER, In der Sache anwendbares Recht vor internationalen Schiedsgerichten mit Sitz in der Schweiz, Art. 187 Abs. 1 IPRG, 2005
- GAILLARD/DI PIETRO, Enforcement of Arbitration Agreements and International Arbitral Awards - The New York Convention in Practice, 2008
- GEISINGER/VOSER, International Arbitration in Switzerland - A Handbook for Practitioners, 2nd ed. 2013
- GIRSBERGER/VOSER, International Arbitration in Switzerland, 3rd ed. 2016
- GÖKSU, Schiedsgerichtsbarkeit, 2014
- HONSELL/VOGT/SCHNYDER/BERTI, Basler Kommentar zum schweizerischen Privatrecht - Internationales Privatrecht (IPRG), 3rd ed. 2013
- KAUFMANN-KOHLER/RIGOZZI, International Arbitration: Law and Practice in Switzerland, 3rd ed. 2015
- KREN/MARKUS, Internationales Zivilprozessrecht - unter Einbezug der internationalen Schiedsgerichtsbarkeit - Entwicklungen 2011, 2012, 2013
- MÜLLER, Swiss Case Law in International Arbitration, 2010
- OBERHAMMER/DOMEJ/HAAS, Kurzkomentar zur schweizerischen Zivilprozessordnung, 2nd ed. 2014
- PATOCCHI/SCHERER (eds.), Swiss International Arbitration Law Reports, 2007-2009 vols. 1-3, Juris Publishing 2012



- PFISTERER/SCHNYDER, International Arbitration in Switzerland - in a nutshell, 2012
- POUDRET/BESSON, Comparative Law of International Arbitration, 2nd ed. 2007
- SCHNEIDER, Funktionen des staatlichen Richters am Sitz des internationalen Schiedsgerichts gemäss 12. Kapitel des IPRG, 2009
- SPÜHLER/TENCHIO/INFANGER, Basler Kommentar - Schweizerische Zivilprozessordnung, 3rd ed. 2017
- STACHER, Einführung in die internationale Schiedsgerichtsbarkeit, 2015
- SUTTER-SOMM/HASENBÖHLER/LEUENBERGER, Kommentar zur Schweizerischen Zivilprozessordnung, 3RD ed. 2016
- TORGLER, Schiedsgerichtsbarkeit - Praxishandbuch, 2007
- ZUBERBÜHLER/MÜLLER/HABEGGER, Swiss Rules of International Arbitration - Commentary, 2nd ed. 2013

Some older monographs and treatises may also be helpful:

- BERNARDINI/BESSON et al., Liber Amicorum - Claude Reymond - Autour de l'Arbitrage, 2004
- BERTI/HONSELL/VOGT/SCHNYDER, International Arbitration in Switzerland, 2000
- BÖCKSTIEGEL, Die Internationale Schiedsgerichtsbarkeit in der Schweiz, Band II, 1989
- BUCHER, Die neue internationale Schiedsgerichtsbarkeit in der Schweiz, 1989
- BUCHER/TSCHANZ, International Arbitration in Switzerland, 1988
- JOLIDON, Commentaire du Concordat suisse sur l'arbitrage, 1984
- KAUFMANN-KOHLER/STUCKI, International Arbitration in Switzerland: A Handbook for Practitioners, 2004
- KNOEPFLER/SCHWEIZER, Arbitrage international - Jurisprudence suisse commentée depuis l'entrée en vigueur de la LDIP, 2003
- LALIVE/REYMOND/POUDRET, Le droit de l'arbitrage interne et international en Suisse: édition annotée et commentée du Concordat sur l'arbitrage du 27



mars 1969 et des dispositions sur l'arbitrage international de la loi fédérale du 18 décembre 1987 sur le droit international privé, 1989

- LIATOWITSCH, Schweizer Schiedsgerichte und Parallelverfahren vor Staatsgerichten im In- und Ausland, 2002
- RÜEDE/HADENFELDT, Schweizerisches Schiedsgerichtsrecht, 2nd ed. 1993
- RÜEDE/HADENFELDT, Schweizerisches Schiedsgerichtsrecht: Supplement to the 2nd ed. 1999
- SCHWAB/WALTER, Schiedsgerichtsbarkeit - Kommentar, 6. Auflage, 2000
- WALTER/BOSCH/BRÖNNIMAN, Internationale Schiedsgerichtsbarkeit in der Schweiz: Kommentar zu Kapitel 12 des IPRG, 1991

Legal articles on international arbitration in Switzerland are predominantly published in the journals referred to under heading II.2.4 and feature on the databases listed under II.2.7.

In addition, the database "Swisslex" generally features commentaries, monographs, journals and jurisprudence on Swiss law. The database, however, does not contain any monographs or treatises specific on international arbitration under the SPILA, nor does it feature the ASA Bulletin or any other specific arbitration journals. Swisslex, however, allows searching the entire case law of the Swiss Federal Supreme Court (published as well as unpublished decisions in the original language) and it makes available monographs and treatises on domestic arbitration under Swiss Code of Civil Procedure. Given the relevance of the CCP and the respective works the database of Swisslex may still be considered a helpful research tool for international arbitration in Switzerland.



IV. Practical Considerations for Presenting the Results of Legal Research to the Arbitral Tribunal

After having successfully completed the research on a certain legal issue, the question arises as to how the findings are to be presented to the arbitral tribunal. At least the following three considerations should be taken into account.

1. THE AIM IS TO CONVINCING THE ARBITRAL TRIBUNAL

The aim of all advocacy is to convince the decision-maker, the arbitral tribunal, of your client's position and to win the case therewith.⁵

This is also to be taken into account for the presentation of the results of legal research: counsel should always present the results of their legal research in the way, which they expect to be seen most persuasive by the arbitrators.

Given that the legal background and experience of an arbitrator might influence her or his expectations regarding the presentation of legal issues, it is crucial to get early on an understanding of the arbitrator's expectations in this regard.

One may also want to take into account personal preferences of the arbitrators. Counsels are well advised to apply those structural and formal elements with which the arbitrators are already familiar and will presumably deem persuasive. Thus, along with the research into the legal and cultural background of an arbitrator, counsels may also want to inquire into the availability of the draft pleadings used in the jurisdiction (e.g. before the national courts) of an arbitrator.

2. CITATIONS

When speaking of citations we understand a citation to be a "*reference to a legal precedent or authority, such as a case, statute, or treatise, that either substantiates or contradicts a given position*".⁶

Given that the principle of *iura novit curia* also applies in international arbitration before arbitral tribunals seated in Switzerland⁷, the arbitrators have to apply the law *ex officio* and the parties do not have to prove the content of the applicable law.

⁵ See e.g. Global Arbitration Review, *The Guide to Advocacy*, 2nd ed. 2017, p. 5.

⁶ Black's Law Dictionary, 10th ed. 2014.

⁷ Decision of Swiss Supreme Court 4A_554/2014 of 15 April 2018, cons. 2.1.



Despite this, it is standard in international arbitrations in Switzerland that counsel provide citations to the legal arguments presented in their submissions to the arbitral tribunal. Parties that are legally represented in the proceedings are usually expected to provide, to the extent possible and appropriate, precise citations of the legal authorities relied upon in support of their legal arguments.

The question of style and format of citations of legal authorities has ever since been controversial. Until today, there has been wide-ranging inconsistency in how legal authorities are to be cited in international arbitrations. For example, US lawyers may more often apply "*The Bluebook*" as standard for legal citations, while UK lawyers may rather rely on the "*Oxford University Standard for the Citation of Legal Authorities (OSCOLA)*".⁸ Swiss lawyers may apply the citation standard they use in state court litigations. But, in the authors' view, neither of these standards reflects general international arbitration practice and might make it difficult for the reader of another jurisdiction to identify and find the cited legal authority.⁹

As an attempt to fill the long-standing void of a guide to citation in international arbitration, the Global Arbitration Review has recently published the "*UCIA - Universal Citation in International Arbitration*". The UCIA provides guidelines for the citations of supporting materials in international arbitration. While it is not yet clear whether the UCIA will become the standard for citations in international arbitration, it is certainly a helpful tool that deserves consideration.

The UCIA, can be downloaded free of charge under the following link:
globalarbitrationreview.com/article/1169169/ucia

3. LEGAL EXHIBITS

Legal exhibits are copies of legal authorities and materials (legal documentation, doctrine, case law, laws, statutes, decrees, regulations, etc.) which are filed to the arbitral tribunal, usually annexed to the respective legal brief.

In international arbitrations in Switzerland, parties are frequently expected to file copies of (the relevant excerpts of) the legal authorities and materials relied upon in their submissions to the arbitral tribunal.

The arbitral tribunal and the parties usually discuss and agree at the outset of the arbitration whether and to what extent the parties are expected to file legal exhibits

⁸ See Global Arbitration Review, *Universal Citation in International Arbitration (UCIA)*, 2018, p. 1.

⁹ *Ibid.*



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Swiss Arbitration Association

together with their submissions. But even if the arbitral tribunal does not request the parties to file legal exhibits, it might make sense to provide the arbitral tribunal with copies of the legal authorities and materials relied upon in the submission as this makes it easier for the arbitral tribunal to check the cited source and, accordingly, more likely that the arbitral tribunal will be convinced by a legal argument brought forward.



V. Further Information on Legal Research in International Arbitration

For further information on legal research in international arbitration, the respective sources and, in particular, on major works and publications in international arbitration practitioners may resort to:

- LOUIS-JACQUES, International Commercial Arbitration: Resources in Print and Electronic Format, available under:
<http://www2.lib.uchicago.edu/~llou/intlarb.html>
- STRONG, Research in International Commercial Arbitration: Special Skills, Special Sources, The American Review of International Arbitration, Vol. 20/2009, p. 119 et seqq.
- STRONG, Research and Practice in International Commercial Arbitration: Sources and Strategies, 2009
- WENGER, Features – Update to International Commercial Arbitration: Locating the Resources, 2004, available under:
<https://www.llrx.com/2004/05/features-update-to-international-commercial-arbitration-locating-the-resources/>

Also, the libraries of world-wide leading universities provide for specific online guides on legal research in international arbitration:

- CORNELL UNIVERSITY LAW LIBRARY, International Commercial Arbitration Guide:
<http://guides.library.cornell.edu/c.php?g=32254>
- HARVARD LAW SCHOOL LIBRARY, International Commercial Arbitration Research Guide:
<http://guides.library.harvard.edu/content.php?pid=155552&sid=1318378>
- NYU LAW LIBRARY, International Arbitration Research Guide:
<http://nyulaw.libguides.com/c.php?g=773854&p=5551748>
http://www.nyulawglobal.org/globalex/International_Commercial_Arbitration1.html
- OXFORD LIBGUIDE, Commercial Arbitration:
<http://libguides.bodleian.ox.ac.uk/content.php?pid=304919&sid=2499284>



Association Suisse de l'Arbitrage
Schweiz. Vereinigung für Schiedsgerichtsbarkeit
Associazione Svizzera per l'Arbitrato
Swiss Arbitration Association

- UC BERKELEY LAW LIBRARY, BOALT HALL, International Commercial Arbitration: Boalt Research Guide
<http://libguides.law.berkeley.edu/content.php?pid=393919&sid=3226601>
- YALE LAW LIBRARY, International Arbitration Research:
<http://library.law.yale.edu/international-arbitration-research>



Association Suisse de l'Arbitrage
Schweiz. Vereinigung für Schiedsgerichtsbarkeit
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