

### **Part 3: Arbitration**

#### **Title 1: General Provisions**

**Art. 353**      Scope of application

<sup>1</sup> The provisions of this Part apply to the proceedings before arbitral tribunals based in Switzerland, unless the provisions of the Twelfth Chapter of the IPLA<sup>101</sup> apply.

<sup>2</sup> The parties may exclude the application of this Part by making an express declaration to this effect in the arbitration agreement or a subsequent agreement, and instead agree that the provisions of the Twelfth Chapter of the PILA apply. The declaration must be in the form specified in Article 358.

**Art. 354**      Arbitrability

Any claim over which the parties may freely dispose may be the object of an arbitration agreement.

**Art. 355**      Location of the arbitral tribunal

<sup>1</sup> The location of the arbitral tribunal shall be determined by the parties or by the body they have designated. If no location is determined, the arbitral tribunal itself determine its location.

<sup>101</sup> SR 291

<sup>2</sup> If neither the parties nor the designated body nor the arbitral tribunal determine the location, the ordinary court that would have jurisdiction to decide the matter in the absence of an arbitration agreement shall decide.

<sup>3</sup> If several ordinary courts have jurisdiction, the location of the arbitral tribunal shall be the location of the ordinary court first seised by virtue of Article 356.

<sup>4</sup> Unless the parties have agreed otherwise, the arbitral tribunal may hold hearings, take evidence and deliberate at any other location.

**Art. 356**          Competent ordinary courts

<sup>1</sup> The canton in which the arbitral tribunal is located shall designate a superior court that shall have jurisdiction:

- a. to decide on objections and applications for review;
- b. to receive the arbitral award on deposit and to certify its enforceability.

<sup>2</sup> The canton where the arbitral tribunal is located shall designate a different court or a differently composed court to have jurisdiction as the sole instance for:

- a. the appointment, challenge, removal and replacement of the arbitrators;
- b. the extension of the arbitral tribunal's term of office;
- c. supporting the arbitral tribunal in all its procedural acts.

## **Title 2: Arbitration Agreement**

**Art. 357**          Arbitration agreement

<sup>1</sup> The arbitration agreement may relate to existing or future disputes arising from a specific legal relationship.

<sup>2</sup> The validity of the agreement may not be disputed on the ground that the main contract is invalid.

**Art. 358**          Form

The arbitration agreement must be done in writing or in any other form allowing it to be evidenced by text.

**Art. 359**          Challenging the arbitral tribunal's jurisdiction

<sup>1</sup> If the validity of the arbitration agreement, its content, its scope or the proper constitution of the arbitral tribunal is challenged before the arbitral tribunal, the tribunal shall decide on its own jurisdiction by way of an interim decision or in the final award on the merits.

<sup>2</sup> An objection to the arbitral tribunal on the grounds of lack of jurisdiction must be raised prior to any defence on the merits.

### **Title 3: Constitution of the Arbitral Tribunal**

#### **Art. 360**      Number of arbitrators

<sup>1</sup> The parties may freely agree on the number of arbitrators. In the absence of an agreement, the arbitral tribunal shall consist of three members.

<sup>2</sup> If the parties have agreed on an even number of arbitrators, it is presumed that an additional arbitrator must be appointed as the chairperson.

#### **Art. 361**      Appointment by the parties

<sup>1</sup> The members of the arbitral tribunal shall be appointed as agreed by the parties.

<sup>2</sup> In the absence of any agreement, each party shall appoint the same number of arbitrators; the arbitrators shall then unanimously elect another person as chairperson.

<sup>3</sup> If an arbitrator is designated by his or her function, the holder of that function who accepts the mandate is deemed to be appointed.

<sup>4</sup> In matters relating to the tenancy and lease of residential property, only the conciliation authority may be appointed as arbitral tribunal.

#### **Art. 362**      Appointment by the ordinary court

<sup>1</sup> If the arbitration agreement provides no other body for the appointment, or if such body does not appoint the members within a reasonable time, the ordinary court competent under Article 356 paragraph 2 shall proceed with the appointment at the request of one of the parties if:

- a. the parties cannot agree on the appointment of the single arbitrator or the chairperson;
- b. a party fails to designate his or her arbitrator within 30 days from being requested to do so; or
- c. the appointed arbitrators cannot agree on the appointment of the chairperson within 30 days from their appointment.

<sup>2</sup> In case of a multi-party arbitration, the ordinary court competent under Article 356 paragraph 2 may appoint all the arbitrators.

<sup>3</sup> If an ordinary court is designated to appoint an arbitrator, it must proceed with the appointment unless a summary examination shows that no arbitration agreement exists between the parties.

#### **Art. 363**      Duty to disclose

<sup>1</sup> A person asked to take the office of an arbitrator must disclose immediately any circumstances that might raise reasonable doubts about his or her independence or impartiality.

<sup>2</sup> This duty continues throughout the proceedings.

**Art. 364** Acceptance of office

<sup>1</sup> The arbitrators shall confirm acceptance of their office.

<sup>2</sup> The arbitral tribunal is constituted only when all the arbitrators have accepted their office.

**Art. 365** Secretary

<sup>1</sup> The arbitral tribunal may appoint a secretary.

<sup>2</sup> Articles 363 paragraph 1 and 367 to 369 apply by analogy.

**Art. 366** Term of office

<sup>1</sup> The parties may limit the term of office in the arbitration agreement or in a subsequent agreement.

<sup>2</sup> The term of office within which the arbitral tribunal must issue its award may be extended:

- a. by agreement of the parties;
- b. at the request of a party or of the arbitral tribunal: by the ordinary court with jurisdiction under Article 356 paragraph 2.

**Title 4: Challenge, Removal and Replacement of Arbitrators****Art. 367** Rejection of an arbitrator

<sup>1</sup> A member of the arbitral tribunal may be challenged:

- a. if he or she lacks the qualifications required by the parties;
- b. if there is a ground for challenge in accordance with the rules of arbitration adopted by the parties; or
- c. if there is reasonable doubt as to his or her independence or impartiality.

<sup>2</sup> If a party wishes to challenge an arbitrator who has been appointed by that party or in whose appointment that party has participated, that party may do so only on grounds that have come to his or her attention after the appointment. Notice of the reason for the challenge must be given to the arbitral tribunal and the opposing party immediately.

**Art. 368** Challenging the arbitral tribunal

<sup>1</sup> A party may challenge the arbitral tribunal if an opposing party has exerted a predominant influence on the appointment of its members. Notice of the challenge must be given to the arbitral tribunal and the opposing party immediately.

<sup>2</sup> The new arbitral tribunal is constituted according to the procedure specified in Articles 361 and 362.

<sup>3</sup> The parties may appoint the members of the challenged arbitral tribunal again as arbitrators.

**Art. 369** Challenge procedure

<sup>1</sup> The parties may freely agree on the challenge procedure.

<sup>2</sup> If no procedure has been agreed, the challenge must be submitted in writing with a statement of the grounds to the challenged arbitrator within 30 days of the challenging party becoming aware of the ground for challenge; notice of the request must be given to the other arbitrators within the same deadline.

<sup>3</sup> If the challenged arbitrator disputes the challenge, the challenging party may within 30 days request a decision by the body designated by the parties or, if no such body has been designated, by the ordinary court that has jurisdiction under Article 356 paragraph 2.

<sup>4</sup> Unless the parties have agreed otherwise, the arbitral tribunal may continue with the arbitration during the challenge procedure and make an award without excluding the challenged arbitrator.

<sup>5</sup> The decision on the challenge may be contested only once the first arbitral award has been made.

**Art. 370** Removal

<sup>1</sup> Any member of the arbitral tribunal may be removed by a written agreement of the parties.

<sup>2</sup> If a member of the arbitral tribunal is unable to fulfil his or her duties within due time or with due diligence, he or she may be removed at a party's request by the body designated by the parties or, if no such body has been designated, by the ordinary court that has jurisdiction under Article 356 paragraph 2.

<sup>3</sup> Article 369 paragraph 5 applies to the challenge of the removal.

**Art. 371** Replacement of an arbitrator

<sup>1</sup> If an arbitrator must be replaced, the same procedure as for appointment applies, unless the parties agree or have agreed otherwise.

<sup>2</sup> If replacement cannot be effected in this way, the new arbitrator shall be nominated by the ordinary court that has jurisdiction under Article 356 paragraph 2 unless the arbitration agreement excludes this possibility or becomes ineffective on the retirement of an arbitrator.

<sup>3</sup> In the absence of an agreement between the parties, the newly constituted arbitral tribunal shall decide on the extent to which procedural acts in which the replaced arbitrator has participated must be repeated.

<sup>4</sup> The deadline within which the arbitral tribunal must issue its award is not suspended during the replacement procedure.

## Title 5: Arbitration Proceedings

### Art. 372 Pendency

<sup>1</sup> Arbitration proceedings become pending:

- a. when a party seises the arbitral tribunal designated in the arbitration agreement; or
- b. if no arbitral tribunal is designated in the arbitration agreement: when a party initiates the procedure to constitute the arbitral tribunal or the preceding conciliation proceedings agreed by the parties.

<sup>2</sup> If identical actions between the same parties are submitted before an ordinary court and an arbitral tribunal, the last seised court shall suspend the proceedings until the first seised court has decided on its competence.

### Art. 373 General rules of procedure

<sup>1</sup> The parties may regulate the arbitration procedure:

- a. themselves;
- b. by referring to a set of arbitration rules;
- c. according to a procedural law of their choice.

<sup>2</sup> If the parties have not regulated the procedure, it is determined by the arbitral tribunal.

<sup>3</sup> The chairperson of the arbitral tribunal may decide on certain procedural questions if he or she is authorised to do so by the parties or by the other members of the tribunal.

<sup>4</sup> The arbitral tribunal must guarantee the equal treatment of the parties and their right to be heard in adversarial proceedings.

<sup>5</sup> Each party may act through a representative.

<sup>6</sup> A complaint must be made immediately about any violation of the procedural rules, otherwise it may not subsequently be claimed that the rules were violated.

### Art. 374 Interim measures, security and damages

<sup>1</sup> The ordinary court or, unless the parties have otherwise agreed, the arbitral tribunal may at the request of a party order interim measures, including measures to protect the evidence.

<sup>2</sup> If the person concerned does not comply with the measure ordered by the arbitral tribunal, the tribunal or a party may apply to the ordinary court for it to issue the necessary orders; if the application is made by a party, it requires the consent of the arbitral tribunal.

<sup>3</sup> The arbitral tribunal or the ordinary court may make the interim measures conditional on the payment of security if it is anticipated that the measures may cause harm to the other party.

<sup>4</sup> The applicant is liable for the harm caused by unjustified interim measures. If he or she proves, however, that the application for the measures was made in good faith, the arbitral tribunal or the ordinary court may reduce the damages or relieve the applicant entirely from liability. The aggrieved party may assert his or her claim in the pending arbitration.

<sup>5</sup> The security must be released once it is established that no claim for damages will be filed; where there is uncertainty, the court shall set a deadline for filing the action.

**Art. 375** Taking of evidence and participation of the ordinary court

<sup>1</sup> The arbitral tribunal takes the evidence itself.

<sup>2</sup> If the taking of evidence or any other procedural act requires the assistance of the official authorities, the arbitral tribunal may request the participation of the ordinary court that has jurisdiction under Article 356 paragraph 2. With the consent of the arbitral tribunal, the same may also be requested by a party.

<sup>3</sup> The members of the arbitral tribunal may participate in the procedural acts of the ordinary court and may ask questions.

**Art. 376** Joinder of parties, joinder of actions and participation of third parties

<sup>1</sup> Arbitration may be initiated by or against joint parties if:

- a. all the parties are connected among themselves by one or more corresponding arbitration agreements; and
- b. the asserted claims are identical or factually connected.

<sup>2</sup> Factually connected claims between the same parties may be joined in the same arbitration proceedings if they are the subject of corresponding arbitration agreements between these parties.

<sup>3</sup> The intervention of a third party and the joinder of a person notified as a party to an action require an arbitration agreement between the third party and the parties to the dispute and are subject to the consent of the arbitral tribunal.

**Art. 377** Set-off and counterclaim

<sup>1</sup> The arbitral tribunal has jurisdiction to decide the set-off defence, even if the claim to be set off does not fall within the scope of the arbitration agreement or is subject to another arbitration agreement or an agreement on jurisdiction.

<sup>2</sup> The counterclaim is admissible if it concerns a claim that is covered by a corresponding arbitration agreement between the parties.

**Art. 378** Advance of costs

<sup>1</sup> The arbitral tribunal may order the advance of the presumed costs of the proceedings and may make the proceedings conditional on the payment of the advance. Unless the parties have agreed otherwise, the arbitral tribunal determines the amount to be paid by each party.

<sup>2</sup> If one party does not pay the required advance, the other party may advance the entire costs or withdraw from the arbitration. In the latter case, the party withdrawing may initiate new arbitration proceedings for the same matter or proceed before the ordinary court.

**Art. 379** Security for party costs

If the plaintiff appears to be insolvent, the arbitral tribunal may at the defendant's request order that security be provided by a certain deadline for the probable party costs due by the defendant. Article 378 paragraph 2 applies by analogy.

**Art. 380** Legal aid

Legal aid is excluded.

**Title 6: Arbitral Award**

**Art. 381** Applicable law

<sup>1</sup> The arbitral tribunal decides:

- a. according to the rules of law chosen by the parties; or
- b. based on equity, if the parties have authorised it to do so.

<sup>2</sup> In the absence of such choice or authorisation, it shall decide according to the law that an ordinary court would apply.

**Art. 382** Deliberations and decision

<sup>1</sup> All members of the arbitral tribunal must participate in the deliberations and decisions.

<sup>2</sup> If an arbitrator refuses to participate in a deliberation or a decision, the others may deliberate or decide without him or her, unless the parties have agreed otherwise.

<sup>3</sup> The award is determined by a majority decision, unless the parties have agreed otherwise.

<sup>4</sup> If no majority is reached, the award is determined by the chairperson.

**Art. 383** Interim and partial awards

Unless the parties have agreed otherwise, the arbitral tribunal may limit the proceedings to certain questions or prayers for relief.

**Art. 384** Content of the award

<sup>1</sup> The award contains details of:

- a. the composition of the arbitral tribunal;

- b. the location where the arbitral tribunal sits;
- c. the parties and their representatives;
- d. the parties' prayers for relief or, if none, the question to be decided;
- e. unless the parties have explicitly dispensed with this requirement: a statement of the facts, the legal considerations and, if applicable, the considerations in equity;
- f. the conclusions on the award on the merits, as well as the amount and allocation of the costs and party costs;
- g. the date of the award.

<sup>2</sup> The award must be signed; the signature of the chairperson suffices.

**Art. 385** Agreement between the parties

If the parties settle their dispute in the course of the arbitral proceedings, the arbitral tribunal shall on request record the agreement in the form of an award.

**Art. 386** Notice and deposit

<sup>1</sup> Each party is served with notice of the award.

<sup>2</sup> Each party may at his or her own expense deposit a copy of the award with the ordinary court that has jurisdiction under Article 356 paragraph 1.

<sup>3</sup> At the request of a party, this court shall certify the award as enforceable.

**Art. 387** Effect of the award

Once notice of the award has been given to the parties, it has the effect of a legally-binding and enforceable judicial decision.

**Art. 388** Correction, explanation and amendment of the award

<sup>1</sup> Each party may apply to the arbitral tribunal to:

- a. correct typographical and arithmetical errors in the award;
- b. explain certain parts of the award;
- c. make an additional award on claims that have been asserted in the course of the arbitration but not included in the award.

<sup>2</sup> The application must be made to the arbitral tribunal within 30 days from the discovery of the error or the parts of the award that need to be explained or amended, but no later than one year from receiving notice of the award.

<sup>3</sup> The application does not suspend the deadlines for contesting the award. If a party is prejudiced by the outcome of this procedure, he or she shall be given a new deadline to contest the award on this point.

## Title 7: Appellate Remedies

### Chapter 1: Objections

#### Art. 389 Objection to the Federal Supreme Court

<sup>1</sup> An arbitral award is subject to objection to the Federal Supreme Court.

<sup>2</sup> The procedure is governed by the Federal Supreme Court Act of 17 June 2005<sup>102</sup>, unless otherwise provided in this Chapter.

#### Art. 390 Objection to the cantonal court

<sup>1</sup> By express declaration in the arbitration agreement or in a subsequent agreement, the parties may agree that the arbitral award may be contested by way of objection to the cantonal court that has jurisdiction under Article 356 paragraph 1.

<sup>2</sup> The procedure is governed by Articles 319 to 327, unless otherwise provided in this Chapter. The decision of the cantonal court is final.

#### Art. 391 Subsidiarity

An objection is only admissible after the means of arbitral appeal provided for in the arbitration agreement are exhausted.

#### Art. 392 Challengeable awards

An objection is admissible against:

- a. partial and final awards;
- b. interim awards on the grounds listed in Article 393 letters a and b.

#### Art. 393 Grounds for objection

An arbitral award may be contested on the following grounds:

- a. the single arbitrator was appointed or the arbitral tribunal composed in an irregular manner;
- b. the arbitral tribunal wrongly declared itself to have or not to have jurisdiction;
- c. the arbitral tribunal decided issues that were not submitted to it or failed to decide on a prayer for relief;
- d. the principles of equal treatment of the parties or the right to be heard were violated;
- e. the award is arbitrary in its result because it is based on findings that are obviously contrary to the facts as stated in the case files or because it constitutes an obvious violation of law or equity;

<sup>102</sup> SR 173.110

- f. the costs and compensation fixed by the arbitral tribunal are obviously excessive.

**Art. 394** Remit for rectification or amendment

After hearing the parties, the appellate court may remit the award to the arbitral tribunal, setting a deadline to rectify or amend it.

**Art. 395** Decision

<sup>1</sup> If the award is not remitted to the arbitral tribunal or if it is not rectified or amended by the tribunal within the set deadline, the appellate court shall decide and, if the objection is approved, shall set aside the award.

<sup>2</sup> If the award is set aside, the arbitral tribunal shall make a new award consistent with the considerations taken into account in the decision to remit the case.

<sup>3</sup> Setting aside may be limited to certain parts of the award if the other parts do not depend on them.

<sup>4</sup> If the arbitral award is contested on the grounds that the compensation and costs are obviously excessive, the appellate court may itself decide on them.

## Chapter 2: Review

**Art. 396** Grounds for review

<sup>1</sup> A party may request the ordinary court that has jurisdiction under Article 356 paragraph 1 to review an arbitral award if:

- a. the party subsequently discovers significant facts or decisive evidence that could not have been submitted in the earlier proceedings, excluding facts and evidence that arose after the arbitral award was made;
- b. criminal proceedings have established that the arbitral award was influenced to the detriment of the party concerned by a felony or misdemeanour, even if no one is convicted by a criminal court; if criminal proceedings are not possible, proof may be provided in some other manner;
- c. it is claimed that the acceptance, withdrawal or settlement of the claim is invalid.

<sup>2</sup> The review on the grounds of a violation of the ECHR<sup>103</sup> may be requested if:

- a. the European Court of Human Rights has determined in a final judgment that the ECHR or its protocols have been violated;
- b. compensation is not an appropriate remedy for the effects of the violation; and
- c. the review is necessary to remedy the violation.

<sup>103</sup> SR 0.101

**Art. 397**      Deadlines

<sup>1</sup> The request for review must be filed within 90 days of discovery of the grounds for review.

<sup>2</sup> The right to request for a review expires 10 years after the award comes into force, except in cases under Article 396 paragraph 1 letter b.

**Art. 398**      Procedure

The procedure is governed by Articles 330 to 331.

**Art. 399**      Remit to the arbitral tribunal

<sup>1</sup> If the court approves the request for review, it shall set aside the arbitral award and remit the case to the arbitral tribunal for a new decision.

<sup>2</sup> If the arbitral tribunal is no longer complete, Article 371 applies.

*English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.*

## **Swiss Civil Procedure Code** **(Civil Procedure Code, CPC)**

of 19 December 2008 (Status as of 1 May 2013)

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*The Federal Assembly of the Swiss Confederation,*  
based on Article 122 paragraph 1 of the Federal Constitution<sup>1</sup>,  
and having considered the Federal Council Dispatch of 28 June 2006<sup>2</sup>,  
*decrees:*

### **Part 1: General Provisions**

#### **Title 1: Subject Matter and Scope of Application**

##### **Art. 1**            Subject matter

This Code governs the proceedings before the cantonal authorities for:

- a. contentious civil matters;
- b. court orders in non-contentious matters;
- c. court orders in matters of debt enforcement and bankruptcy law;
- d. arbitration.

##### **Art. 2**            International matters

The provisions of international treaties and of the Federal Act of 18 December 1987<sup>3</sup> on International Private Law (IPLA) are reserved.

AS 2010 1739

<sup>1</sup> SR 101

<sup>2</sup> BBl 2006 7221

<sup>3</sup> SR 291

**Art. 61**          Arbitration agreement

If the parties have concluded an arbitration agreement relating to an arbitrable dispute, the seised court shall decline jurisdiction unless:

- a. the defendant has made an appearance without reservation;
- b. the court holds that the arbitration agreement is manifestly invalid or unenforceable; or
- c. the arbitral tribunal cannot be constituted for reasons that are manifestly attributable to the defendant in the arbitration proceedings.