



Swiss Arbitration Law is Modern and Flexible

A modern law for international arbitration: Switzerland has a highly effective statutory framework for arbitration, based upon a simple and pragmatic approach that aims at maximizing party and arbitrator autonomy. The provisions governing international arbitration are set out in only 19 concise articles of the **Chapter 12 of the Swiss Private International Law Act (PILA)** and apply where the seat of the arbitration is in Switzerland and at least one party had its domicile, registered seat or habitual residence outside of Switzerland at the time the arbitration agreement was entered into (article 176 of the PILA). While the PILA shares many principles underlying the **UNCITRAL Model Law on International Commercial Arbitration**, it is more liberal and flexible in its approach, in line with the Swiss tradition (see **Switzerland has a Long Tradition of Arbitration**). Where the PILA does not apply, arbitration proceedings are governed by the more detailed but similarly liberal 2011 **Swiss Code of Civil Procedure (CCP)**. Regardless of the international nature of their dispute, the parties are free to agree to the application of the PILA or the CCP where these statutes would not ordinarily apply.

Pro-arbitration statutory framework: Any dispute involving an economic interest may be subject to arbitration (article 177). The PILA recognizes the substantive validity of an arbitration agreement if it is valid under any one of three different laws: the law governing the dispute, the law governing the arbitration agreement or Swiss law (article 178(2)). Under Swiss law, an arbitration agreement exists where the parties agree to submit their existing or future disputes to a private arbitral tribunal and do so "in writing", i.e. via any means of communication that permits the agreement to be evidenced by means of a text (article 178 (1)). A signature is not required.

Flexible and party-friendly: With the exception of very few mandatory provisions ensuring due process and respect for the parties' right to equal treatment and right to be heard (article 182), the parties enjoy broad freedom to structure the arbitral proceedings as they wish. In particular, the PILA grants the parties the right to: determine the manner in which the arbitral tribunal is constituted (article 179); appoint any arbitrator that is independent and impartial (articles 179 and 180); determine the arbitral procedure (article 182); and agree to forego their right to challenge the arbitral award in cases where all parties have their domicile or habitual residence outside Switzerland (article 192). The parties are also free to retain counsel of their choice.

Arbitral tribunals have broad authority: To the extent that the parties have not determined the arbitral procedure themselves, the arbitral tribunal has the power to do so (article 182). Arbitral tribunals also have the power to decide on their own jurisdiction (article 186); to conduct the taking of evidence (article 184); and to grant interim or injunctive relief (article 183).

Swiss courts are experienced and arbitration-friendly: Parties and/or the arbitral tribunal may request the assistance of the state courts, for instance with regard to: the constitution of the arbitral tribunal (article 179); the challenge of arbitrators (article 180); the enforcement of provisional measures issued by the arbitral tribunal (article 183); the taking of evidence (article 184); and any other issues for which assistance may be required (article 185). The Swiss courts provide such support in an expeditious and arbitration-friendly manner. In the case of jurisdictional disputes Swiss courts will refer the case to arbitration where there is prima facie evidence of an arbitration agreement and the seat of the arbitration is in Switzerland. By contrast, Chapter 12 does not provide for judicial interference in arbitral proceedings. Any challenge to an award needs to be brought directly to the Swiss Supreme Court; the grounds for annulment are narrow (articles 190 and 191). The proceedings are short and efficient. See Setting Aside Proceedings.