



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

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ASA Observations on the Chapter 12 Revision

On 24 October 2018, the Swiss Federal Council sent its Message and Draft Bill on the Revision of Switzerland's International Arbitration Act (Chapter 12 of the Swiss Private International Law Act, PILA) to Parliament.

ASA actively participated in the pre-draft revision process, by filing its Observations on the Pre-Draft Bill on 12 May 2017. ASA is pleased to note that many of its comments have been considered.

Certainly, the most important innovation proposed by the Federal Council is that submissions to the Swiss Federal Supreme Court should become admissible in English, the predominant language in international arbitration proceedings.

All in all, the Federal Council's Draft Bill ensures that Chapter 12 PILA maintains its position as one of the internationally most regarded arbitration laws of high quality and still innovative after 30 years since its original introduction in 1989. It combines party autonomy with the guarantee of a reliable judicial system. These qualities also explain why Chapter 12 PILA is fit to apply to many different types of arbitration such as ad hoc proceedings, institutional arbitration, sports arbitration, investment arbitration etc. The Draft Bill relies on these essential strengths and modernises the provisions of Chapter 12 on a selective basis. In particular, it transposes the case law which the Swiss Federal Supreme Court has developed over the last three decades. The revision also aims at further strengthening the position of Chapter 12 as a "stand-alone" international arbitration act, e.g. by reducing the references to other laws to a minimum. In summary: The proposed revision brings Chapter 12 PILA up to date again, but retains its conciseness and flexibility.

On individual key points, ASA is pleased to note that the Draft Bill:

- refrains from introducing special legislation for certain types of arbitration, and also avoids introducing limits in special areas such as employment or consumer law;
- leaves untouched the grounds for setting aside awards PILA and the time of 30 days for actions for annulment against arbitral awards, the latter ensuring that annulment proceedings in Switzerland remain short and straightforward;



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- clarifies that arbitration clauses in unilateral legal transactions are deemed valid under Chapter 12 PILA provided they conform to the existing requirements of written form;
- introduces new legislation ensuring that judicial assistance in Switzerland can be sought even where an arbitration clause provides for no seat at all or merely for a seat "in Switzerland", without reference to a particular Swiss city;
- permits the court at the place of arbitration in Switzerland to appoint all arbitrators in multi-party arbitrations, absent a joint appointment by the parties;
- ensures that the principle of waiver of rules will be expressly stated in the new law;
- allows access to the court at the place of arbitration in Switzerland even in arbitral proceedings before arbitral tribunals seated abroad;
- incorporates the duty of arbitrators to disclose potential conflicts of interest;
- transposes to the law the parties' existing right to request interpretation, correction or amendment of an award, as well as their right to request a revision of an award in extraordinary circumstances; and finally,
- refrains from introducing the principle of the negative effect of competence-competence and its extension to arbitral tribunals based abroad.