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Efficiency of process

The Swiss legal system is generally efficient and reliable, with rules that apply uniformly across the country. The organisation of the court system falls under the authority of each of the 26 cantons (states) of Switzerland. Consequently, the organisation, cost structure, and procedural details may vary from canton to canton. Each canton's court system typically includes **several lower-instance courts** and a **centralised court of appeals**. Additionally, the cantons of Zurich, Berne, Aargau, and St. Gallen maintain so-called "**commercial courts**" that handle cases between commercial parties. Starting from 1 January 2025, cantons will also be permitted to establish **international commercial courts** (see "Cross-border litigation"). Decisions by the court of appeals or by the commercial courts can, in general and if the amount in dispute surpasses CHF 30,000, be appealed to the Swiss Federal Tribunal, which acts as a national supreme court.

While the organisation of the court system differs in each canton, the procedural rules, in principle, do not. They are fixed in the Swiss Code of Civil Procedure[1] ("**CPC**") and, for the enforcement of monetary claims, in part also in the Swiss Debt Enforcement and Bankruptcy Act[2] ("**DEBA**"). For the CPC and most major laws (but not the DEBA), an English translation is available online (https://www.fedlex.ch).

Aside from special procedures in family law and tenancy law or for employment disputes, three types of proceedings can be distinguished: summary proceedings (Art. 248 pp. CPC); simplified proceedings (Art. 243 pp. CPC); and ordinary proceedings (Art. 219 pp. CPC).

Summary proceedings

Court injunctions, interim measures, non-contentious matters, and specifically designated matters are handled through summary proceedings. Typically, in summary proceedings, the parties' pleadings are limited to one exchange of briefs, evidence must be provided in the form of physical records, and deadlines for submissions are very short, often only 10 days, with no or only minimal extensions granted. Whether an oral hearing is conducted is at the discretion of the judge (Arts 252–256 CPC). In cases where summary proceedings are used for interim measures that will be followed by a full procedure later, the standard of proof is usually lowered to "credibility" (as opposed to a strict standard of proof).[3]

In addition, the law provides for summary proceedings in cases where a party applies for "legal protection in clear cases" (Art. 248(b) CPC). A clear case is defined as a case where the facts are undisputed or immediately provable and the "legal situation is clear" (Art. 257 CPC).[4] The purpose of this special proceeding is to give a prospective claimant a fast and easy route to justice. It is noteworthy that the standard of proof in such cases is elevated to ordinary level, i.e., full proof of all facts is necessary.

Simplified and ordinary proceedings

Most ordinary claims will not qualify for summary proceedings. Depending on the amount, they are thus dealt with in simplified proceedings (when the amount in dispute is CHF 30,000 or lower with some exceptions; for example, in tenancy law) or in ordinary proceedings.

Simplified and ordinary proceedings are **preceded** by a **mandatory conciliation** hearing before the conciliation authority (sometimes also called the "peace judge"; Arts 197–212 CPC). This hearing is mandatory for all claims being heard by the ordinary lower-instance courts. It is voluntary for proceedings before commercial courts. The aim of this hearing is to provide the parties with a guided opportunity for an amicable settlement of their dispute. For very low amounts (below CHF 10,000),[5] the conciliatory authority can issue a provisional judgment that can be appealed by the parties. If no settlement is reached, the conciliatory authority issues an authorisation to proceed to court, where the case will be decided in simplified or ordinary proceedings. The time limit to proceed to court is usually three months (30 days in tenancy disputes and some other cases) from the time the authorisation was given.

Simplified proceedings (Arts 243–247 CPC) can be conducted orally or in writing. They are usually limited to one exchange of briefs, followed by an oral hearing including taking of evidence and a decision by the court.

Ordinary proceedings (Arts 219–242 CPC) are the norm for most cases in Switzerland. They usually include an exchange of two sets of written briefs between the parties, followed by the taking of evidence and a full oral hearing. Commercial courts as well as some other lower-instance courts often hold an "instruction hearing" after the first exchange of briefs. Such hearings are used by the court to give a preliminary view of the case and point out the strengths and weaknesses of each party's position. This is then followed by court-guided settlement negotiations. While appearing strange at first sight, such hearings provide the parties and their counsel with a first evaluation by the judge and are often the catalyst for an amicable settlement of the dispute. If the parties agree on a settlement, the court will usually fix the wording of the settlement in a court order that has the same validity and enforceability as a judgment.

Duration

According to the 2023 report by the Zurich courts, 97% of all matters at lower-instance courts were handled and concluded within less than a year. At the level of the court of appeals and/or the commercial courts, 90% of all matters were equally handled and concluded within less than a year.[6]

Use of technology

Swiss civil procedure is still very much driven by the principles of physical presence. In principle, it is possible to file claims electronically with the court. However, so far there is no obligation for the court to administer proceedings electronically. This will likely change

with the introduction of an electronic platform to handle all court proceedings, planned to be mandatory by mid-2027.[7]

Independent of said platform, on 1 January 2025, a reform of the CPC will enter into force, allowing courts to conduct hearings and other oral procedural acts by way of **video conference** or other electronic audio/video equipment (Arts 141a and 141b nCPC).[8] However, for acts where the parties are required to appear in person, such video hearing is only allowed if all parties, their counsel and the court agree to it. In other words, neither the parties nor the court can force a video hearing against the wishes of the other parties involved. Given this situation, it remains to be seen whether and to what extent video hearings will establish themselves in Swiss court proceedings.

It should be noted that in case of **cross-border video hearings**, care should be taken to comply with international judiciary aid treaties. In this context, the relevant treaties are the Hague Convention of 1 March 1954 on Civil Procedure[9] and the 1970 Evidence Convention.[10] Under the relevant treaties, the participation of Swiss residents in foreign proceedings by video hearing requires permission by the Swiss Federal Department of Justice. The Swiss government is currently preparing legislation that will do away with the permission requirement. However, participation in foreign judiciary proceedings will remain limited to judicial authorities whose government has signed the respective treaties of The Hague. Failure to comply with the respective provisions may constitute an offence against the Blocking Statutes of Art. 271 of the Swiss Criminal Code (prohibition to act for a foreign state on Swiss soil).[11]

Integrity of process

The integrity of the Swiss court system is guaranteed by the Swiss Constitution and is internationally recognised. Courts are independent, and the government has no possibility of interference. If a party suspects bias by the appointed judge, the CPC provides a standard procedure to independently address such challenges.

Privilege and disclosure

Attorney-client privilege is guaranteed by Art. 13 of the Federal Act on the Free Movement of Lawyers[12] ("**FMLA**"). Privilege is unlimited in time and applies to dealings with any person in relation to anything entrusted to them by their clients in the course of their professional activities (Art. 13(1) FMLA). Consequently, parties can refuse to hand over documents that were produced by their lawyer and fall under attorney-client privilege. As of 1 January 2025, **in-house counsel** will also be able to rely on (reduced) privilege and, for example, refuse to cooperate or hand over documents in the context of civil proceedings. To benefit from this, the head of in-house legal services must hold a Swiss Bar admission (*Rechtsanwaltspatent*), and the services provided in-house must be considered a "professional activity" when outsourced to a lawyer (Art. 167a(1)(a–c) nCPC).

The contents of **settlement negotiations** are considered confidential according to the code of conduct of the Swiss Bar Association.[13] Violations of such confidentiality may trigger professional sanctions. In addition, information regarding settlement negotiations or any other information that is marked "confidential" may only be admitted as evidence in proceedings if the opposing party agrees.[14]

Activities that are conducted by lawyers but are not considered "core attorney business" (such as acting as a director of a company,[15] conducting internal investigations for a client,

advising on asset management,[16] etc.) fall outside the scope of attorney-client privilege and may have to be disclosed under certain circumstances. It is recommended to seek specific Swiss legal advice in case privilege is sought for such tasks.

Evidence

Swiss civil procedure is generally driven by the principle of party disposition. This means that it is up to the parties to assert and prove the facts they want to rely on. The CPC provides an **exhaustive list** of the admissible means of **evidence** to do that (Art. 168(1) CPC). These are (oral) witness testimony, physical records, inspections, expert opinions, written statements, and direct examination of the parties. **Physical records** include documents, photos, audio, video, and other means of electronic files, and (any) other means of record that is suitable to prove a legally significant fact. As of 1 January 2025, a private expert opinion will also be considered a piece of admissible evidence (previously it was only considered to be a party statement). Furthermore, it is to be noted that in an international context, expectations as to what constitutes reliable evidence are rather high in Switzerland. The regular **standard of proof** in court proceedings is such that a court must be convinced of the existence of an alleged fact.[17] Only in exceptional cases where strict proof is either impossible or unreasonable due to the nature of the case is the standard lowered to preponderant probability.[18]

Consequently, parties are well advised to properly document all business activities and use **wet ink signatures** for important contract conclusions.

There is **no pre-trial discovery** in Switzerland and the right to **document production is severally limited**. Parties are expected to rely on their own skills to collect evidence. If a party wants to rely on a document in the possession of its opponent, it has to credibly show that such document exists, what the (likely) content of the document is and why it is necessary to obtain this document to prove the asserted fact. The document(s) need to be described and named as precisely as possible.[19] For example, a request to produce "all correspondence" or "the entire accounting documents" of a company has been considered to be too unspecific.[20] If document production is granted, the document is to be produced to the court directly (and not to the party requesting it) and used as evidence to support a specific party assertion.

Actual **taking of evidence ahead of trial** is only permitted if the law specifically foresees it or if a party can credibly demonstrate that a later taking of evidence cannot be guaranteed or that it has a justified interest in an advance taking of interest (Art. 158 CPC).

Costs

Procedural costs are divided into court costs (i.e., fees for the decision, taking of evidence, translations, etc.) and a set "party compensation" awarded to the winning party as compensation for its legal fees. Court costs and party compensation are set according to cantonal lists, which set fixed rates depending on the amount in dispute. In reality, especially in smaller claims, the party compensation awarded by the court will not be sufficient to cover the winning party's attorney fees. Furthermore, the court usually has flexibility in adjusting both court costs and party compensation according to its perception of the complexity and duration of the proceedings.

When initiating a claim, a **claimant** usually has to **advance** 50% of the prospective court costs (100% in exceptional cases).[21] A respondent does not have to pay an advance on court costs.

In some circumstances, a respondent may apply to the court for **security for costs**. This is aimed at securing the costs for his legal defence. A request can only be made for costs that have not been incurred yet. Therefore, requests are usually made at the beginning of proceedings.[22] Circumstances in which security for costs is granted include, *inter alia*, a claimant domiciled abroad (provided there is no international treaty ruling out security for costs for claimants from that jurisdiction) or a claimant undergoing bankruptcy or liquidation proceedings (Art. 99(1) CPC). Failure by a claimant to pay the advance on court costs or security for costs (if so ordered) results in the case being dismissed without prejudice (i.e., the claimant may refile the claim at a later stage).

Finally, the court will take its **decision on costs** together with the final judgment on the substantive issues. In doing so, it generally follows the "loser pays" principle, awarding court costs and party compensation in proportion to the degree it has granted both parties' prayers for relief.[23]

Litigation funding

A significant part of the cost of litigation in Switzerland comprises the cost of a party's own legal representation. Consequently, the question arises as to how to fund such representation.

Litigation funding and insurance cover

Third-party litigation funding, while undoubtedly admissible, is still not very common in Switzerland. In civil proceedings, there is currently no obligation to disclose the presence of a third-party litigation funder (as opposed to arbitration where certain arbitration rules require the fact that a litigation funder is involved to be disclosed).[24] Care needs to be taken to ensure that a party's legal counsel remains independent of the litigation funder. In practice, this means that a party's counsel remains bound to the party's instructions. Even if the litigation funder exerts (financial) pressure or influence on the funded party, the lawyer must ensure that he receives his instructions from the represented party and is thus not directly affected by such pressure from the funder.

A more common occurrence in Switzerland is the presence of **litigation insurance**. Many private individuals and companies will have taken out insurance designed to protect against legal claims. Where this is the case, settlement agreements that involve a payment from an insured party to its counterparty usually need to be approved by the insurance company.

Agreements with counsel regarding attorney fees

In principle, the mandate between an attorney and their client is a simple agency agreement under the Swiss Code of Obligations. As such, the parties are free to agree on the nature of the attorney's compensation. Most Swiss attorneys will agree with their clients on an **hourly rate** for themselves and, where applicable, their employees or colleagues. In addition, where the scope of work to be conducted is limited, parties sometimes agree on a fee cap or a flat fee. It should be noted that flat or capped fees can be problematic in litigation as the time necessary to effectively pursue or defend a claim usually depends on the conduct of the other party and can thus hardly be calculated accurately in advance. As a result, most litigation is conducted on an agreement whereby the lawyers are paid by hourly rates.

Clients may be tempted to try and limit their cost risk in such procedures by agreeing with their legal counsel on **contingency or success fees** (*pactum de quota litis*). Such agreements, wherein a lawyer receives a portion of the "earnings" from a court proceeding or is only paid in case of a favourable outcome, are **forbidden** by Art. 12(e) FMLA.

Permitted are agreements wherein lawyers work for a (lowered) hourly rate combined with a premium in case of a favourable outcome (*pactum de palmario*). In order for such an agreement to be permissible under Swiss law, three conditions need to be met: (1) the agreed-upon hourly rate must cover the attorney's fixed costs and a "reasonable additional earning"; (2) the premium, when compared to the hourly rate, must not be so high as to question the attorney's independence; and (3) the *pactum de palmario* must either be agreed upon at the beginning of the mandate or after the judgment is received. It is not permitted to agree on a *pactum de palmario* while proceedings are ongoing. Given the severe restrictions placed on such agreements, they have not been very common in Switzerland to date.[25]

Class actions

There is no class action, as seen in the U.S., in Swiss civil proceedings. In Spring 2024, the legal affairs committee of the National Council of the Swiss Parliament, not for the first time, refused to enter a debate on class action. Consequently, the introduction of such an instrument is not expected in the near future.

In the absence of a typical class action, Art. 89 CPC provides for a **group action** open to associations (*Verein*) and "*other organisations of national or regional associations that are authorized by their articles of association to protect the interests of a certain group of individuals*". Such organisations may bring a claim in their own name or in the name of their members. Claims are limited to a request that the court prohibit an imminent violation, stop an ongoing violation, or establish the unlawful character of a violation if it continues to have a disturbing effect. In other words, the claims are limited to negatory or non-monetary claims aimed at reparation. It is built to prevent events that will impact many people. However, it does not allow for seeking monetary compensation.[26] Consequently, the practical significance of such group actions has been limited so far.

Another, more widely used instrument is the **voluntary joinder of parties** (Art. 71 CPC). According to this provision, two or more claimants having a similar claim against a respondent may join together and present their claim in one single proceeding. Claims can only be joined if the rights asserted by the parties result from similar factual or legal grounds, are subject to the same procedure, and the court seized has jurisdiction to hear all claims. Voluntary joinder proceedings are common, for example, where several homeowners bought new homes and are suing the constructor for mistakes made during the construction, or for banking clients that assert claims against their bank arising from similar banking contracts.

If voluntary joinder is granted, the court will handle all claims in a single proceeding and issue a single judgment. In this judgment, the court is, however, free to grant one claim and deny another claim. In the same manner, every claimant is free to accept the decision or to appeal it without regard to what the other claimants are doing.

Interim relief

Interim relief in general

Interim relief is available for monetary and non-monetary claims. Generally, interim relief is granted if a claimant can credibly show that one of its rights has been violated or is about to be violated and (cumulatively) that such violation threatens to cause "*not easily reparable harm*" (Art. 261(1)(a) and (b) CPC). Interim relief is dealt with in summary proceedings,

meaning that the counterparty usually gets a brief deadline of 10 days to respond to the request before the court takes its decision.

In cases of special urgency, particularly where a previous response by the counterparty would endanger the successful execution of the interim relief sought, the court may order ***ex-parte* interim relief**. In such instances, the court, having decided *ex-parte*, must immediately summon the parties to a hearing or set the counterparty a deadline to provide a written response, following which the interim relief decision may be confirmed or revisited by the court (Art. 265(1) and (2) CPC).

Parties fearing the imposition of *ex-parte* interim relief against themselves may file a **protective writ** setting out their position on the expected action with the competent court (Art. 270 CPC). If an application for *ex-parte* interim relief is received, the court will then take into consideration the protective writ before deciding on the measure.

Freezing orders and attachments in particular

Monetary claims can be secured by so-called **attachment** orders pursuant to Arts 271–281 DEBA. This is a crucial instrument in Swiss enforcement law as it allows creditors to freeze assets on the basis of advancing a *prima facie* claim.

A creditor wanting to secure an attachment has to show ***prima facie* evidence** of (1) the existence of a valuable claim against the debtor, (2) the presence of a ground for attachment (see below), and (3) a specification of the assets to be attached, such as bank accounts, real estate, or vehicles (Art. 272 (1) DEBA).

As for the **ground for attachment**, Art. 271(1)(1)–(6) contains a closed list of acceptable reasons for attachment. These are:

1. The debtor has no fixed domicile in Switzerland.
2. The debtor, with the intent to evade the fulfilment of their obligations, hides assets, flees, or makes preparations to flee.
3. The debtor is in transit or is a vendor at fairs and markets, and the claim is by its nature due immediately.
4. The debtor does not reside in Switzerland and no other arrest grounds are present, but the claim has a sufficient connection to Switzerland or is based on an acknowledgment of debt according to Art. 82(1) DEBA.
5. The creditor possesses a provisional or definitive certificate of loss[27] against the debtor.
6. The creditor holds an enforceable judgment against the debtor.

In an international context, grounds no. 4–6 are the most common. In regard to what is a "sufficient connection to Switzerland", this is to be determined on a case-by-case basis. It can, for example, be confirmed if the creditor is domiciled in Switzerland, or if conflict of laws rules would lead to Swiss jurisdiction or the application of Swiss material law to the claim, or if the claim concerns business activities in Switzerland, or if the assets to be secured are located in Switzerland.[28]

Attachment procedures are granted ***ex-parte***, with the debtor (and third parties concerned) being only informed after the event. Given these circumstances and the fact that the existence of a claim had only to be demonstrated on a *prima facie* basis, Art. 279(1) states that a creditor must **commence** ordinary (court or arbitration) **proceedings** or debt enforcement proceedings **within 10 days** of the attachment having been granted. Failure to do so results in a lifting of the attachment order.

A debtor wanting to oppose the attachment has the opportunity to file an "attachment objection" with the court within 10 days.[29] In such a case, the court will conduct summary proceedings to determine the validity of the attachment proceedings. Alternatively, a debtor may choose to provide sufficient security for payment to the debt enforcement office in order to lift the attachment on his remaining assets (usually a payment of approximately 120% of the claim concerned is asked, but the debt enforcement officer enjoys wide discretion as to what he or she considers "sufficient security").[30]

Recognition of foreign freezing orders

In principle, **foreign freezing orders** (sometimes called "Mareva injunctions") can be recognised in Switzerland provided that the respective order meets the conditions of recognition under the Private International Law Act[31] ("**PILA**") or applicable international treaties, such as the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters[32] (Lugano Convention, "**LugC**"). To receive an actual attachment in Switzerland, it is, however, usual to apply for an attachment order with the competent court. The foreign freezing injunction can, in this context, be used to demonstrate valid grounds for the attachment application.

Enforcement of judgments/awards

Swiss courts are well versed in enforcing foreign judgments and awards. The respective provisions to be followed are stated in Arts 25–31 PILA or the respective international treaty, such as the LugC. In addition, Swiss Parliament has approved a future signature of the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.[33] As of the date of this publication, it is not yet known when accession to the Convention may happen.

Recognition of foreign judgments is usually addressed as a preliminary matter during enforcement proceedings. Depending on whether a monetary claim or a non-monetary claim is to be enforced, the proceedings follow the principles of the DEBA or the CPC.

In either case, judgments under the LugC are recognised without any review of the substantive matters of the judgment (with a few exceptions). For foreign judgments outside the LugC member states and without bilateral treaties, PILA provisions apply. Generally speaking, foreign judgments are recognised and enforced in Switzerland if basic procedural rules (due process, right to be heard, etc.) have been followed and if the judgment is not contrary to Swiss *ordre public* considerations.

Foreign arbitral awards are recognised and enforced pursuant to the provisions of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards[34] ("**New York Convention**"). Where an arbitral tribunal is seated in Switzerland, no separate recognition proceeding is necessary.

Cross-border litigation

Jurisdiction clauses and international commercial courts

Switzerland is well accustomed to international cases being decided in the country, and choice of forum clauses are a regular instrument with which courts are familiar. In the case of **arbitration**, it is recommended to use a standard arbitration clause as provided by arbitration centres such as the Swiss Arbitration Centre or the International Chamber of Commerce ("**ICC**").[35]

For **court-based disputes**, we recommend clearly defining a city as the place of jurisdiction to avoid any misgivings and/or later discussions about the competent court within Switzerland. The **key choice** for commercial clients when choosing jurisdiction is whether the chosen canton has a commercial court or not. Proceedings before commercial courts tend to be more expensive; however, judges at commercial courts are often more familiar with business-related matters than judges in other first-instance courts. In addition, decisions by the commercial courts can only be appealed to the Federal Tribunal (as opposed to first-instance judgments from other courts, which can be appealed to the cantonal High Court and then to the Federal Tribunal). Therefore, proceedings along the "commercial court route" tend to be shorter.

Care should be taken that the chosen seat of jurisdiction has a sufficient connection to the potential dispute. If a contract is subject to foreign law (i.e., not subject to Swiss law) and no party has its seat or domicile or at least a branch office in the respective canton, courts may decline jurisdiction based on Art. 5(3) PILA.[36] If jurisdiction is to be upheld in any event, it may thus be preferable to include an arbitration agreement instead of a court jurisdiction clause in the respective contract.

From 1 January 2025 onwards, cantons will be allowed to establish "**international commercial courts**" that deal with international disputes. In such settings, neither party needs to be from Switzerland. Furthermore, the proceedings can be conducted in English. The cantons of Zurich and Geneva have expressed an interest in setting up international commercial courts. However, at the time of this publication, it is not yet clear when and how such courts will be established or what the prospective court fees will be.

Regarding form, forum selection clauses need *not* be formally concluded in signed agreements. However, the law demands that they be recorded in a form "allowing it to be evidenced by text" (e.g., email, fax, etc.). Care should be taken when including **forum selection clauses in general terms and conditions** ("**GTC**"). According to case law by the Federal Tribunal, forum selection clauses in GTC are only valid if the parties have explicitly agreed upon their application. A mere (supposed) "taking note" of the GTC without reply (i.e., silence) is not sufficient.[37]

Finally, it is to be noted that pursuant to Art. 5 PILA, a matter can only be subject to a forum selection clause if the dispute carries an economic interest (*vermögensrechtliche Streitigkeit*). This limitation does not exist under the LugC, so it is mostly relevant when one of the parties is seated outside the European Union, Norway, Iceland, or Denmark (without Greenland or the Faroe Islands).

Liquidation proceedings in particular

Often, foreign entities that enter liquidation, bankruptcy, or similar proceedings have assets in Switzerland (bank account balances, claims against customers, etc.). It is important to note that **liquidators are not allowed to directly access assets or initiate proceedings** to (re)claim such assets. If they were to do so, they (and their Swiss advisors) would be committing a criminal offence pursuant to Art. 271 of the Swiss Criminal Code.

In order to act on Swiss soil, foreign liquidators must first be formally recognised in Switzerland. This is done by way of a "**PILA-Bankruptcy**" proceeding wherein the foreign proceedings are recognised by the court (Arts 166 *et seq*. PILA). Very generally speaking, such proceedings are structured as follows: first, the court publishes a debt call. If privileged creditors come forward, auxiliary bankruptcy proceedings are then opened in Switzerland in which these creditors are satisfied first, and the surplus is then transferred to the foreign

bankruptcy estate, provided that the receiving state does not discriminate against Swiss creditors. If, however, there are no privileged creditors in Switzerland, the liquidator can request that auxiliary bankruptcy proceedings be waived and the power to conduct proceedings instead be vested directly in the liquidator. Following such a proceeding, the liquidator can then act on behalf of the bankruptcy estate and, for example, collect claims or initiate legal proceedings against debtors located in Switzerland. It is common for foreign liquidators to seek the assistance of qualified Swiss counsel for such proceedings.

International arbitration

Switzerland has a long-standing arbitration tradition and a very active community of competent arbitrators. Most larger commercial law firms offer arbitration services, whether as counsel or having lawyers sitting as arbitrators. In addition, there are a few very renowned arbitration boutique firms based in Switzerland.

The PILA (for international arbitrations) and the CPC (for domestic arbitrations) both contain solid *lex arbitri* provisions, ensuring stability of proceedings and enforceability of awards while giving the parties large flexibility on how the actual proceedings are to be conducted. The **Swiss Arbitration Centre** provides cutting-edge dispute administration services and is also the author of the internationally renowned **Swiss Rules on International Arbitration**.[38]

Many international arbitrations seated in Switzerland are conducted in English. This is reflected in the fact that the **challenge of an arbitral award** before the Federal Tribunal **can be made** in one of the official administrative languages of Switzerland (German, French, Italian) or **in English** as well. The latter is considered a significant simplification for international parties seeking to challenge an arbitral award.

(International) arbitral awards may be challenged before the Federal Tribunal, which acts as the only appellate body. The grounds for appeal are, in principle, limited to wrongful composition of the arbitral tribunal, violations of procedural rights of a party, decisions outside the competence of the tribunal, or a violation of Swiss *ordre public*. For domestic awards, the challenge procedure depends on the cantonal procedural law.

Mediation and ADR

As mentioned above (see "Efficiency of process"), Swiss civil procedure foresees an **informal conciliatory hearing** before the conciliation authority/peace judge. In addition, Art. 214(2) and (3) CPC state that the court may, at any time in the proceedings, recommend to the parties to commence a mediation on their disputes. If both parties agree, the proceedings are stayed until the mediation has run its course.

Mediation proceedings are considered to be separate from court proceedings and have to be organised by the parties themselves. The Swiss Arbitration Centre offers administrative support for parties wishing to mediate under the **Swiss Mediation Rules**.[39]

Dispute adjudication boards and similar instruments known to other jurisdictions are not yet widely known in Switzerland. Parties wishing to consider such mechanisms are advised to set out detailed contractual agreements on when and how such procedures are to be instigated.

Regulatory investigations

Regulatory investigations most frequently happen either in the field of cartel law or in the financial and insurance markets. Generally speaking, any person suspecting wrongdoing, or a violation of applicable regulatory laws, may inform the regulatory bodies of that suspicion. These bodies then examine the validity of the allegations. If they find them to possibly have merit, they may open up a regulatory investigation and, depending on the result of such investigation, instigate enforcement proceedings against the violating party. The original person raising the suspicion is usually not a party to such proceedings and, as such, also has no right to information and no opportunity to claim, for example, for damages against the offending party in such proceedings. The practical relevance for a private party seeking to raise claims against a party violating regulatory provisions is thus limited.

Endnotes

1 SR 272 – Swiss Civil Procedure Code of 19 December 2008 | Fedlex (https://www.fedlex.admin.ch/eli/cc/2010/262/en).

2 SR 281.1 – Swiss Debt Enforcement and Bankruptcy Act of 11 April 1989 | Fedlex (https://www.fedlex.admin.ch/eli/cc/11/529_488_529/de).

3 Decision of the Federal Tribunal, BGE 138 III 232 dated 5 March 2012, cons. 4.1.1; Stephan Mazan, N 1 and 10 to Art. 254 CPC in Karl Spühler/Luca Tenchio/Dominik Infanger (eds.), *Basler Kommentar zur Schweizerischen Zivilprozessordnung*, 3rd ed., Basel 2017; Peter Hafner, N 10 to Art. 168 CPC in Karl Spühler/Luca Tenchio/Dominik Infanger (eds.), *Basler Kommentar zur Schweizerischen Zivilprozessordnung*, 3rd ed., Basel 2017.

4 For example, decision of the Federal Tribunal 4A_415/2013 dated 20 January 2014, cons. 6 and 4A_168/2015 dated 28 October 2015, cons. 3.

5 As of 1 January 2025; until then, the limit is CHF 5,000 (Art. 201(1)(c) CPC).

6 Zurich Court of Appeals, Statements of accounts 2023 pp 11 and 35, see: https://www.gerichte-zh.ch/fileadmin/user_upload/Dokumente/obergericht/Rechenschaftsberichte/Rechenschaftsbericht_2023/RB2023.pdf

7 Plattform justitia.swiss (https://www.justitia40.ch/de/projekte/plattform).

8 SR 272 – Swiss Civil Procedure Code of 19 December 2008 | Fedlex (https://www.fedlex.admin.ch/eli/cc/2010/262/en) with revision that will be in force as of 1 January 2025.

9 Convention of 1 March 1954 on civil procedure, see: https://www.hcch.net/en/instruments/conventions/full-text/?cid=33

10 Convention on the Taking of Evidence abroad in civil or commercial matters of 18 March 1970, see: https://www.hcch.net/en/instruments/conventions/specialised-sections/evidence

11 Sandrine Giroud/Noémie Raetzo, *Audiences civiles par vidéoconférence*, ZZZ 64/2023, pp 359, 361 *et seq*.; see also Markus Husmann, N 57 *et seqq*. CC in Marcel Alexander Niggli/Hans Wiprächtiger (eds.), *Basler Kommentar Strafrecht*, 4th ed., Basel 2019.

12 SR 935.61 – Federal Act of 23 June 2000 on the Free Movement of Lawyers | Fedlex (https://www.fedlex.admin.ch/eli/cc/2002/153/en).

13 Swiss Code of Deontology (SCD) Art. 28, available in German, see: Schweizer Standesregeln (https://www.sav-fsa.ch/documents/672183/1748990/Schweizerische_Standesregeln_1.7.23.pdf/2301b061-6bc2-c5e6-cfb4-53c609918bd4?t=1688044281914).

14 See decision of the Federal Tribunal 2c_500/200 dated 17 March 2024, cons. 4.4 and 4.5.

15 Decision of the Federal Tribunal BGE 115 Ia 197 dated 16 October 1989, cons. 3(d)(bb).

16 Decision of the Federal Tribunal BGE 112 Ib 606 dated 29 December 1986, cons. (b).

17 Decision of the Federal Tribunal BGE 130 III 321 dated 29 January 2004, cons. 3.2.

18 Decision of the Federal Tribunal BGE 132 III 75 dated 28 August 2006, cons. 3.1.

19 Franz Hasenböhler/Sonia Yañez, Das Beweisrecht der ZPO – Bd. 1, Zürich 2015, paras 4.7–4.9; Ernst F. Schmid, N 22a–24 to Art. 160 CPC in Karl Spühler/Luca Tenchio/Dominik Infanger (eds.), *Basler Kommentar zur Schweizerischen Zivilprozessordnung*, 3rd ed., Basel 2017.

20 Zurich Court of Appeals (*Kassationsgericht*), 62. Judgment dated 6 February 1995, ZR 95/1996, pp 189, 190 *et seq*.

21 As of 1 January 2025; until then, a claimant usually has to advance 100% of the prospective court costs.

22 Viktor Rüegg/Michael Rüegg, N 5 to Art. 99 CPC in Karl Spühler/Luca Tenchio/Dominik Infanger (eds.), *Basler Kommentar zur Schweizerischen Zivilprozessordnung*, 3rd ed., Basel 2017; Adrian Urwyler/Myriam Grütter, N 4 to Art. 99 CPC in Alexander Brunner/Dominik Gasser/Ivo Schwander (eds.), *Schweizerische Zivilprozessordnung, Kommentar*, 2nd ed., Zürich 2016.

23 Dominik Gasser/Brigitte Rickli, Kurzkommentar ZPO, N 1 to Art. 106 CPC, 2nd ed., Zürich/St. Gallen 2014.

24 Isabelle Berger/Olivia Furter/Franziska Studer, *Bei der Prozessfinanzierung*, ZZZ 62/2023, pp 165 and 170; Linus Zweifel, *Prozesskostensicherheit im Schiedsverfahren, unter besonderer Berücksichtigung der erfolgshonorierten Prozessfinanzierung*, Zürich/St. Gallen 2021, pp 147 *et seq*.

25 Decision of the Federal Tribunal 4A_240/2016 dated 13 June 2017, cons. 2.5; Marti-Schreier Leonora, *Erfolgshonorare: Pactum de palmario zulässig – unter Einhaltung gewisser Grenzen*, ZBJV 153/2017, pp 911, 915 *et seq*.

26 Samuel Klaus, N 5 and 7 to Art. 89 CPC in Karl Spühler/Luca Tenchio/Dominik Infanger (eds.), *Basler Kommentar zur Schweizerischen Zivilprozessordnung*, 3rd ed., Basel 2017.

27 A certificate of loss is issued if, following an enforcement procedure under DEBA rules, a debtor cannot settle the debts due to lack of funds. A certificate of loss enables the creditor to enforce his claim at a later stage and in case the debtor has accumulated new wealth. Certificates of loss are generally valid for 20 years.

28 Walter A. Stoffel, N 91–94 to Art. 271 DEBA in Daniel Staehelin/Thomas Bauer/Franco Lorandi (eds.), *Basler Kommentar Bundesgesetz über Schuldbetreibung und Konkurs*, 3rd ed., Basel 2021.

29 For the beginning of the deadline, see: Zurich Court of Appeals decision PS200041 dated 18 June 2020, cons. 4.4.

30 Urs Boller, *Der neue Arrestgrund von* Art. 271 Abs. 1 Ziff. 6 SchKG, AJP 2010, pp 187, 192; *cf*. also Remo Crestani, *Rolle und Aufgaben des Betreibungsamts im Arrestverfahren*, ZZZ 42/2017, pp 162, 165 *in fine*.

31 SR 291 – Federal Act on Private International Law | Fedlex (https://www.fedlex.admin.ch/eli/cc/1988/1776_1776_1776/en).

32 SR 0.275.12 – Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters | Fedlex (https://www.fedlex.admin.ch/eli/cc/2010/801/de); English version available at EUR-Lex – 22007A1221(03) – EN – EUR-Lex (https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22007A1221%2803%29).

33 Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, see: https://www.hcch.net/en/instruments/conventions/full-text/?cid=137

34 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards | New York Convention (https://www.newyorkconvention.org/english).

35 For more information, see: https://www.swissarbitration.org and https://iccwbo.org/dispute-resolution

36 Pascal Grolimund/Eva Bachofner, N 59 to Art. 5 PILA in Pascal Grolimund/Leander D. Loacker/Anton K. Schnyder (eds.), *Basler Kommentar zum Internationalen Privatrecht*, 4th ed., Basel 2021; Axel Buhr/Simon Gabriel/Dorothée Schramm, N 40 to Art. 5 PILA in Andreas Furrer/Daniel Girsberger/Rodrigo Rodriguez (eds.), *Handkommentar zum Schweizer Privatrecht*, 4th ed., Zürich 2024.

37 Decision of the Federal Tribunal 4A_507/2021 dated 2 June 2022, cons. 5.1.2.

38 For more information, see: https://www.swissarbitration.org

39 For more information, see: https://www.swissarbitration.org/centre/mediation

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