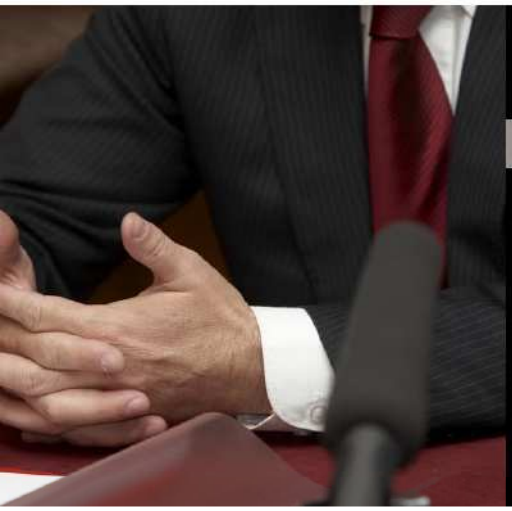

SWITZERLAND

URS WEBER-STECHER
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Q COULD YOU OUTLINE SOME OF THE CURRENT MARKET CHALLENGES AT THE CENTRE OF COMMERCIAL DISPUTES IN SWITZERLAND? WHAT RECURRING THEMES ARE YOU SEEING?

WEBER-STECHER: As one of the original venues for arbitration, Swiss institutions have been offering institutional arbitration for commercial disputes for more than 100 years – for instance Zurich's Chamber of Commerce since 1911. One of the major challenges today is the increasingly competitive environment of international dispute settlement. Various countries such as Germany and Austria in Europe, or Singapore and Hong Kong in the Far East, continue to increase their efforts to create attractive conditions for dispute settlement. Thus, even traditional places like Switzerland face an ongoing challenge to remain one step ahead. The revision of the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution (Swiss Rules) in June 2012 serves this purpose effectively.

Q WHAT IS YOUR ADVICE TO COMPANIES ON IMPLEMENTING AN EFFECTIVE DISPUTE RESOLUTION STRATEGY TO DEAL WITH CONFLICT, TAKING IN THE PROS AND CONS OF ARBITRATION VERSUS OTHER DISPUTE RESOLUTION METHODS?

WEBER-STECHER: Companies engaged in international business are well advised to include an arbitration clause in their agreements with their business partners. The main reasons for choosing arbitration as a dispute settlement tool include confidentiality and privacy, flexibility, and the shorter duration of procedures, enforceability of awards, and the ability to select arbitrators. Institutional arbitration rules, like the Swiss Rules, also contain provisions dealing with joinder of third parties, and the Swiss Federal Court has developed case law extending an arbitration agreement to non-signatory third-parties. While the parties may agree on a seat of arbitration in Switzerland and choose a foreign substantive law to govern the contract, the ability to synchronise the law of the seat – *lex arbitri* – with the applicable law has substantial advantages.

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Q HOW WOULD YOU DESCRIBE ARBITRATION FACILITIES AND PROCESSES IN SWITZERLAND?

WEBER-STECHER: Switzerland is well known for its excellent business infrastructure and, historically, as a politically stable and neutral country. There are many hotels and other facilities offering ideal locations for the conduct of arbitration hearings. The legal environment is also ideal. With Chapter 12 of the Swiss Private International Law Act (SPILA) and also, since January 2011, the third chapter of the Swiss Code on Civil Procedure, Switzerland has a very liberal and arbitration friendly legislation. In combination with institutional arbitration under the Swiss Rules or the ICC Rules – or any other set of institutional rules allowing the conduct of arbitration hearings in Switzerland – Switzerland thus offers an ideal legal framework for arbitration.

Q HOW SUPPORTIVE ARE THE COURTS WITH RESPECT TO UPHOLDING AND ENFORCING ARBITRAL AWARDS? WOULD YOU CONSIDER THE JUDICIARY TO BE 'ARBITRATION FRIENDLY'?

WEBER-STECHER: In Switzerland, the judiciary is very arbitration friendly. First, the Swiss Federal Supreme Court is the only court with the power to review awards of arbitral tribunals. Hence there is only one level of appeal admissible, and even this appeal can be waived if none of the parties is Swiss. Secondly, an award rendered by an arbitral tribunal having its seat in Switzerland may only be set aside on very limited grounds, such as severe violations of party rights or seriously deficient arbitral tribunals. Moreover, the Swiss Federal Supreme Court applies the grounds for appeal very restrictively. For the enforcement of foreign arbitral awards in Switzerland, the SPILA refers to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. In this respect, the case law of the Federal Supreme Court can also be described as being prudent and arbitration friendly.

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Q WHAT PRACTICAL ISSUES NEED TO BE DEALT WITH WHEN UNDERTAKING COMPLEX INTERNATIONAL, MULTI-JURISDICTIONAL ARBITRATIONS IN SWITZERLAND?

WEBER-STECHER: There are no specific practical issues to be dealt with in Switzerland, which would not also apply to arbitration proceedings conducted in other countries. The arbitration friendly legislation, the political openness of Switzerland, its liberal market conditions, and its well-developed infrastructure make it an easily accessible and attractive place for any kind of arbitration. In the case of complex multi-jurisdictional disputes, the fact that witness hearings can be conducted in best-equipped facilities close to the international airports of Zurich or Geneva is paramount. Many Swiss arbitration practitioners are experienced in handling complex multi-jurisdictional cases, both as counsel and as arbitrators. Their experience not only includes a skilled legal approach but also efficient organisation of the proceedings, including organisational meetings and evidentiary hearings.

Q HAVE THERE BEEN ANY RECENT CHANGES IN ARBITRATION RULES IN SWITZERLAND? IF SO, HOW WILL THESE CHANGES AFFECT THE PROCESS, AND WHEN WILL THEY BE BROUGHT INTO FORCE?

WEBER-STECHER: There have been important changes in Swiss legislation and institutional arbitration rules quite recently. As of 1 January 2011, the CCP came into force. The third Chapter of the CCP – articles 353 to 399 – contains a separate set of modern state-of-the-art arbitration rules for domestic arbitration, which may also be applied to international arbitration if the parties opt for this alternative. In June 2012, the revised Swiss Rules came into force. These are a well-established set of modern arbitration rules for institutional arbitrations that meet the highest standards. Finally, there are ongoing discussions about a revision of Chapter 12 SPILA. Although the short and clear regulation of Chapter 12 is still highly regarded in the arbitration community both within and outside of Switzerland, certain aspects may be adjusted to bring the code in line with prevailing case law of the Federal Tribunal or to keep pace with general developments in international arbitration.

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Q IN YOUR EXPERIENCE, WHAT CONTRACTUAL CONSIDERATIONS SHOULD COMPANIES MAKE TO ADDRESS THE POSSIBILITY OF ENCOUNTERING FUTURE ARBITRATION IN THEIR COMMERCIAL ACTIVITIES?

WEBER-STECHER: In addition to the parties' agreement on a seat of arbitration with a suitable *lex arbitr*i, the parties may choose a set of arbitration rules for a specific institution as well as the law applicable to the merits. As in state court proceedings, it is very important that the companies define the mutual rights and obligations of the parties in their contracts in such a manner that, should a dispute arise, an arbitral tribunal will be in a position to assess the relevant facts and apply the law. Should the business be of a very specific nature, it may make sense to add specific requirements for the eligibility as arbitrator – for example, that arbitrators need technical or legal expertise and experience in a specific field. If the parties come from different cultural or legal backgrounds, they may want to agree on an arbitrator's nationality and language. However, it is not advisable to be too specific in the arbitration agreement, because this may lead to an unwanted restriction of potential candidates.

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Urs Weber-Stecher is a partner at Wenger & Vieli. He practises mainly in the areas of international arbitration and cartel law. He regularly acts as arbitrator or counsel in international arbitration disputes and indeed his experience includes more than 75 cases of national and international arbitration. He has been a teaching fellow for international arbitration at the University of Zurich since 2001, is a member of the Court of Arbitration of the Swiss Chambers' Arbitration Institution and of the ICC Commission on Arbitration, and is also a director, founding member and lecturer at the Swiss Arbitration Academy.