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Switzerland

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Introduction

International arbitration in Switzerland is governed by the 12th chapter of the Swiss Private International Law Act ("**SPILA**") which entered into force on 1 January 1989. The 12th Chapter of the SPILA consists of 19 articles (i.e. arts. 176-194 SPILA), constituting a modern and concise arbitration act, independent from the other chapters of the SPILA. Even though the SPILA is not based on the UNCITRAL Model Law, these two statutes, which were drafted around the same time, do not differ substantially.

Domestic arbitration in Switzerland is governed by the 3rd Part of the Swiss Code of Civil Procedure ("**CCP**") which entered into force on 1 January 2011. Thereby, the CCP replaced not only the cantonal codes of civil procedure but also the inter-cantonal concordat for arbitration ("**Concordat**"), which had been in place since 1969 and had originally governed both domestic and international arbitration. The 3rd Part of the CCP (arts. 353-399 CCP) modernised the Swiss law on domestic arbitration and eliminated the differences between the SPILA and the Concordat. The 3rd Part of the CCP is, however, based on the established provisions of the Concordat, while the SPILA, and occasionally the UNCITRAL Model Law, only served as a basis for selected provisions and only to the extent that such reference was adequate for domestic arbitration.

Pursuant to art. 176(1) SPILA, an arbitration is considered international if at least one party to the arbitration was not domiciled in Switzerland at the time of the conclusion of the arbitration agreement. By contrast, an arbitration is considered as domestic if all parties to the arbitration have their domicile or residence in Switzerland at the time of conclusion of the arbitration agreement. It should be noted, however, that the Swiss Federal Supreme Court ("**SFSC**") deviates from the wording of art. 176(1) SPILA, insofar as the question whether the arbitration is international or domestic is not determined based on the domicile or residence of the parties at the time of the conclusions of the arbitration agreement, but instead based on the domicile or residence of the parties to the arbitration proceedings (SFSC decision 4A_143/2015 of 14 July 2015, cons. 1.1; SFSC decision 4P.54/2002 of 24 June 2002, cons. 3).

The parties to an arbitration may choose to opt out of the 12th Chapter of the SPILA and to declare the 3rd Part of the CCP applicable, and *vice versa*. Opting-out of one of the respective arbitration laws may be in the interest of the parties, depending on the circumstances of the case, since aspects such as e.g. the definition of arbitrability or the grounds to challenge an arbitral award may differ (see below).

In addition to the statutory framework on arbitration in Switzerland, a further source governing arbitration is the rich body of case law of the SFSC.

Given that the 3rd Part of the CCP largely rests on the Concordat, regarding domestic arbitration the practitioners may still rely on the case law and doctrine to the Concordat.

Switzerland hosts many arbitration bodies active in various different industry sectors, such as the WIPO, the Dispute Settlement Body of the WTO, or the Court of Arbitration for Sports. With regard to international commercial arbitration, the Swiss Chambers' Arbitration Institution ("**SCAI**"), which administers cases in accordance with the Swiss Rules of International Arbitration ("**Swiss Rules**"), has gained significant importance. Besides the ICC in Paris, the SCAI is doubtlessly the most important institution for international commercial arbitration held in Switzerland. In 2015 the SCAI administered 100 new cases, in the vast majority of which (about 70% of the cases) no party had its domicile in Switzerland.

Arbitration agreement

Under Swiss arbitration law the prerequisites of a valid arbitration agreement are that the parties mutually intend to arbitrate, that the arbitral tribunal may be determined, that the subject matter in dispute is arbitrable, that the parties have legal capacity to act and conduct arbitration proceedings, and that the arbitration agreement is made in any form allowing it to be evidenced by text.

With regard to the form of the arbitration agreement, under both the 12th Chapter of the SPILA and the 3rd Part of the CCP neither a signature nor an exchange of documents is required, which is in line with the standard set forth by art. 7(4) UNCITRAL Model Law Option I (as amended in 2006) and, therewith, more liberal than the formal requirements of art. II NYC.

In general, only the parties to the arbitration agreement are bound by the applicable arbitration law. Nevertheless, in international arbitration an arbitration agreement may extend to non-signatory parties under exceptional circumstances, e.g. in case of an assignment of a claim, the simple or joint assumption of an obligation (guarantee), the transfer of a contractual relation, or where a third party involves itself deeply enough in the contractual relationship (see e.g. SFSC decision 4A_450/2013 of 7 April 2014, cons. 3.2; SFSC decision 4A_627/2011 of 8 March 2012, cons 3.1; SFSC decision 4A_44/2011 of 19 April 2011, cons. 2.4.1; SFSC decision 134 III 565 of 19 August 2008, cons. 3.1; or SFSC decision 129 III 727 of 16 October 2003, cons. 5.3.1).

Irrespective of art. 376 CCP, which states that "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", the afore-mentioned principles regarding the extension of the arbitration agreement to non-signatories also apply in domestic arbitration.

The 12th Chapter of the SPILA and the 3rd Part of the CCP contain different rules as to the arbitrability of a dispute. While under the SPILA, any dispute involving an economic interest is arbitrable, under the CCP a dispute is considered to be arbitrable if the parties are "free to dispose of" their claim. The latter definition of arbitrability in the CCP requires that the parties are free to settle the dispute out of court or by acceptance in front of the court. The difference of the definitions used can be illustrated, e.g. by the following examples: On one side, while claims arising out of an exclusion of a cultural organisation or claims of protection of one's personality rights may be freely disposed of by the parties, such claims do not fall under the definition of an economic interest in the sense of art. 177 SPILA. On the other side, claims related to the revocation of a state licence may represent

an economic interest; the parties, however, cannot freely dispose of such claims (nor of the licence) in the sense of art. 354 CCP.

Arbitration procedure

According to art. 183 SPILA (as well as pursuant to art. 373 CCP), the parties are free to regulate the arbitration proceedings themselves, by referring to a set of arbitration rules or in accordance with a procedural law of their choice. Failing any designation by the parties and subject to their equal treatment and their right to be heard, the arbitral tribunal enjoys discretion about how to regulate and conduct the proceedings.

Arbitration proceedings are pending from the moment a party files a claim with the arbitral tribunal designated in the arbitration agreement or, in the absence of such designation, if a party initiates the procedure for the appointment of the arbitral tribunal (art. 181 SPILA; cf. art. 372 CCP). Usually the arbitration rules applicable in the respective case will specify how and where to commence the arbitration. Article 3 Swiss Rules states, for instance, that the party commencing the arbitration shall submit a Notice of Arbitration to the Secretariat, setting out the necessary details of the dispute as listed in para. 3 of the provision. Similarly, art. 4 of the ICC Rules states the content of the Request for Arbitration to be submitted to the Secretariat of the ICC Court, upon receipt of which the arbitration shall be deemed as commenced.

Within the framework of the Swiss Rules, depending on the amount in dispute, different provisions on procedure may apply. Where the amount in dispute does not exceed CHF 1 million, the so-called "expedited procedures" as per art. 42 Swiss Rules apply, which generally provide for a sole arbitrator, for one exchange of briefs and one hearing only, and require the sole arbitrator to render an award within six months upon receipt of the case file. The ICC Rules, in contrast, do not provide for expedited or other specific proceedings that would apply, depending on the amount in dispute.

With regard to rules on the taking of evidence, in the light of party autonomy, the arbitral tribunal seated in Switzerland is bound by the parties' agreement and will apply the procedural rules chosen by them. Failing any designation by the parties, the arbitral tribunal will determine the issue and may, if it deems appropriate, seek guidance in the IBA Rules on the Taking of Evidence in International Arbitration. For instance, concerning privilege and disclosure in international arbitration, the arbitral tribunal may rely on arts. 3(3) and 9(2) of the IBA Rules on the Taking of Evidence.

The question of confidentiality is not addressed by the 12th Chapter of the SPILA nor by the 3rd Part of the CCP. While arbitrators are bound by the contract of the arbitrator's appointment ("*receptum arbitri*") to keep the arbitration proceedings confidential, whether or not the parties are bound to confidentiality is subject to their respective agreement in the main contract, in the arbitration clause or depending on what arbitration rules they have adopted.

Pursuant to art. 44 Swiss Rules the parties, the arbitral tribunal and all other actors involved in the arbitration undertake to keep confidential *inter alia* all awards, orders and materials submitted in the framework of the arbitral proceedings as well as the arbitral tribunal's deliberations. The ICC Rules, in contrast, do not contain a specific provision regarding the confidentiality of the proceedings. Therefore, absent an explicit agreement of the parties to the contrary, arbitration proceedings under the ICC Rules are not confidential in principle.

Arbitrators

Pursuant to art. 179(1) SPILA as well as art. 361 CCP, the parties are free to agree on the appointment of the arbitrators. In general, however, each party shall appoint the same number of arbitrators and the so elected arbitrators shall appoint the presiding arbitrator. Where the parties have not agreed on the appointment mechanism, under the 12th Chapter of the SPILA, the ordinary court, the seat of the arbitral tribunal, may be called upon to appoint an arbitrator.

Article 362 CCP specifies for domestic arbitration that, failing an agreement by the parties, the ordinary court may be called upon if a party fails to designate its arbitrator or if the appointed arbitrators cannot agree on the appointment of the presiding arbitrator.

In international as well as domestic arbitration in Switzerland, arbitrators are subject to the duty to disclose any conflicts of interest that might raise reasonable doubts as to his or her independence or impartiality. Thereby, it is generally understood that the arbitrator's duty of disclosure continues throughout the proceedings (*cf.* for domestic arbitration art. 363(3) CCP).

Where such reasonable doubts as to an arbitrator's independence or impartiality exist, a party may challenge the respective member of the arbitral tribunal. An arbitrator may further be challenged if he or she does not possess the qualifications agreed upon by the parties, or if there exist grounds for challenge in the applicable arbitration rules.

In the course of exercising their duty of disclosure, arbitrators may resort to the IBA Guidelines on Conflict of Interest, which have been referred to by the Swiss Federal Supreme Court as a "valuable working tool" that sets out general principles that would likely influence the practice of arbitral institutions as well as that of Swiss state courts (*cf.* SFSC decision 4A_506/2007 of 20 March 2008, cons. 3.3.2.2).

While the parties are free to agree on the challenge procedure in principle (art. 181(3) SPILA and art. 369(1) CCP), a party that wishes to challenge an arbitrator must inform the arbitral tribunal and the other party immediately after it has gained knowledge of such ground for challenge, otherwise the party will be deemed to have waived its right to challenge.

Article 369 CCP sets out the challenge procedure for domestic arbitration, suggesting that the submission of a written challenge within 30 days of the challenging party becoming aware of the ground for challenge is considered as "immediate" and, hence, timely. If the written challenge is disputed by the challenged arbitrator, the challenging party may within 30 days seek a decision on the challenge by the body designated by the parties or, failing any designation, by the ordinary court at the seat of arbitration.

Where the designated body decided on the challenge of the arbitrator, the decision may only be contested once the first arbitral award has been issued (*cf.* for domestic arbitration art. 369(5) CCP). In contrast, the decision on the challenge by the ordinary court is final and not subject to appeal at all (cf. art. 180(3) SPILA).

With the issuance of the final award the arbitrator's mandate is usually terminated, i.e. the arbitrators are "*functus officio*". Moreover, an arbitrator's mandate may be terminated as a consequence of the challenge procedure, or if a member of the arbitral tribunal is removed based on the parties' written agreement, or because the arbitrator is unable to fulfil his or her duties.

In international arbitration in Switzerland it is generally admissible and rather common in larger or more complex arbitration cases for an arbitral tribunal to appoint an administrative secretary. In principle, administrative secretaries are subject to the same provisions and standards of independence and impartiality as the arbitral tribunal, as reflected not only in

art. 15(5) Swiss Rules but also in the ICC's revised "Note on the Appointment, Duties and Remuneration of Administrative Secretaries", which requires the secretaries' declaration of independence and impartiality.

Article 365(2) CCP explicitly enshrines this general understanding for domestic arbitration in Switzerland.

Interim relief

In arbitrations seated in Switzerland, arbitral tribunals are competent to order interim measures as well as security for costs (*cf.* art. 183 SPILA, art. 374 and art. 379 CCP). Absent an explicit agreement by the parties, however, the arbitrators' competence is not exclusive. Rather, in principle state courts and arbitral tribunals have concurrent jurisdiction to order interim measures.

As to the content of the interim measures, arbitrators generally enjoy wide discretion. Accordingly, pursuant art. 26(1) Swiss Rules as well as art. 28(1) ICC Rules, an arbitral tribunal may grant any interim measures it deems "necessary" or "appropriate".

Under Swiss arbitration law, the arbitrators' power to order interim measures is limited by the fact that arbitrators do not have coercive power to enforce the interim measures ordered. Accordingly, art. 183(2) SPILA as well as art. 374(2) CCP provide that if a party does not comply voluntarily with the measures ordered, the arbitral tribunal may request the assistance of the competent judge, who shall apply his own law.

In urgent cases and before the arbitral tribunal is constituted, there may already exist a need for interim relief. Thus, pursuant to art. 43 Swiss Rules, a party requiring urgent interim relief may submit an application for emergency relief to the Secretariat of the SCAI. Thereupon the Secretariat shall appoint and transmit the file to a sole emergency arbitrator who should decide on the application within 15 days from the transmission of the file.

The ICC Rules contain similar provisions concerning urgent interim relief in art. 29 ICC Rules in conjunction with Appendix V, i.e. the so-called "Emergency Arbitrator provisions".

Given the very little case law, one can conclude that anti-suit and anti-arbitration injunctions are rare in international arbitration proceedings seated in Switzerland. Nevertheless, it is acknowledged that, where appropriate under the circumstances, an arbitral tribunal may issue anti-suit injunctions, ordering the party to refrain from initiating or pursuing parallel proceedings in state courts. While it may be argued that such power of the arbitral tribunal derives from the broad competence to issue interim relief (art. 183 SPILA, art. 371 CCP or e.g. art. 26 Swiss Rules), it has been held that the tribunal's power for issuing anti-suit injunctions (also) roots in the competence-competence principle, *as per* art. 186 SPILA (and art. 359 CCP for domestic arbitration). Should a party, however, not comply with such injunction it remains questionable whether an anti-suit injunction could be enforced. While an arbitral tribunal may request the assistance of the competent court *as per* art. 183(2) SPILA, the court applies its own law and, as such, remains limited to the relief it is entitled to grant in accordance with that law. Now, Swiss procedural law does not provide for anti-suit or anti-arbitrations injunctions. Taking into account that also under the Brussels Convention/ Lugano Convention anti-suit injunctions are illegal, it is considered that anti-suit or anti-arbitration injunctions cannot be enforced by state courts in Switzerland. The situation may be different, however, if the parties' contract, out of which the dispute arises, provides for a contractual obligation (such as a coexistence agreement) on the basis of which the state court may issue a measure amounting to an anti-suit injunction (*cf.* SFSC decision 138 III 304 of 5 April 2012, cons. 5.3).

Arbitration award

In international arbitration proceedings in Switzerland the parties have the autonomy to decide on the procedure and the form an arbitral award (art. 189(1) SPILA), be it an interim, partial or final award. In the absence of such agreement, according to art. 189(2) SPILA the award will be rendered by a majority or, in the absence of such majority, by the chairman alone, the award will be in writing, set forth the reasons on which it is based, and be dated and signed.

In contrast, in domestic arbitrations in Switzerland the parties are not absolutely free to decide on the procedure or the form of the arbitral award. Article 382(1) CCP requires that all members of the arbitral tribunal must participate in the deliberations and decisions. The parties may, however, stipulate how to proceed where an arbitrator refuses to participate in deliberations or a decision. Absent any parties' agreement, the other arbitrators may deliberate or decide without the arbitrator refusing the participation. Moreover, *as per* art. 382(3) CCP, absent any other agreement by the parties, the award is determined by a majority decision. Where a majority cannot be reached the presiding arbitrator may render the award.

As far as form and content of the award are concerned, pursuant to art. 384 CCP an award must be in writing, set forth the reasons on which it is based, be dated and be signed, at least by the chairman. The award has to detail the composition of the tribunal, the place of arbitration, the parties and their representatives, the parties' prayers for relief, a statement of facts and legal considerations, the conclusions on the award on the merits, on the amount, on the allocation of the costs and party costs, and the date of the award. Given the mandatory character of art. 384 CCP, the parties may only dispense with the requirement of a statement of facts and legal considerations.

In both international and domestic arbitration in Switzerland, an arbitral tribunal can order costs for the parties. Thereby, the tribunal enjoys wide discretion on how it intends to apportion the costs between the parties.

Challenge of the arbitration award

Pursuant to art. 191 SPILA, parties to an international arbitration may challenge the award in front of the Swiss Federal Supreme Court, as the only and final instance. In international arbitration, *as per* art. 192 SPILA parties may also, by express declaration in the arbitration agreement or in a subsequent written agreement, exclude the right to challenge the arbitral award.

In contrast, under the CCP parties cannot waive their right to challenge the award. The parties may, however, by express declaration in the arbitration agreement or in a subsequent agreement, agree that the arbitral award will be challenged before the competent cantonal court (e.g. the Court of Appeals of the Canton of Zurich), instead of before the SFSC.

Article 190(2) SPILA and art. 393 CCP set forth the grounds of challenge of an international, and respectively a domestic arbitral award. Under the SPILA an arbitral award may be challenged only: (a) if a sole arbitrator was designated irregularly or the arbitral tribunal was constituted irregularly; (b) if the arbitral tribunal erroneously held that it had or did not have jurisdiction; (c) if the arbitral tribunal ruled on matters beyond the claims submitted to it or if it failed to rule on one of the claims; (d) if the equality of the parties or their right to be heard was not respected; and (e) if the award is incompatible with public policy (*ordre public*). The "public policy" challenge allows for a limited review of the award in substance. The scope of review, however, is limited to the issue of whether the arbitral award complies with the most fundamental principles, laws and values of Switzerland, such

as e.g. *pacta sunt servanda*, the principle of good faith, the prohibition of the abuse of rights or the prohibition of discrimination.

For domestic arbitration proceedings art. 393 CCP stipulates very similar grounds for challenge as under the SPILA. It contains one more ground to challenge the award in lit. f, namely that the arbitral award may be challenged if the costs and compensation fixed by the arbitral tribunal are obviously excessive. The provision therefore entitles the parties to a domestic arbitration to challenge the compensation or the expenses of the arbitral tribunal where they exceed a reasonable amount. The parties, however, may not challenge the compensation of the parties or the apportionment of costs between the parties.

Moreover, under art. 393 lit. e. CCP, parties may challenge the award if it 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. Similar to the public policy challenge in art. 190(2) lit. e SPILA in international arbitration, in domestic arbitration proceedings art. 393 lit. e CCP is the only ground for challenge allowing for a limited review of the award in substance. Unlike the "public policy" challenge in international arbitration, however, the review in the light of "arbitrariness" for domestic arbitration is much broader. Under said ground for challenge, *as per* art. 393 lit. e CCP, it is sufficient that the arbitral tribunal has committed an obvious miscarriage of justice.

Under the SPILA and the CCP the parties may challenge both partial awards and final awards on the basis of the afore-mentioned grounds. Interim awards may only be challenged for lack of jurisdiction or irregular constitution of the arbitral tribunal.

Pursuant to the most recent survey regarding the challenges of Swiss arbitral awards (see Dasser/Roth, Challenges of Swiss Arbitral Awards – Selected Statistical Data as of 2013, in ASA Bulletin, vol. 32, 3/2014), since 2009 (and by the end of 2013) 12 appeals to the Swiss Federal Supreme Court have been successful (out of 146 decisions of the SFSC), whereas in the preceding period between 1989 and 2009 only 13 challenges had been brought before the SFSC with success (out of 289 decisions rendered by the SFSC). The growing success rate of challenges, however, goes in hand with the increase in the number of challenges. Nevertheless, the success rate stays low, i.e. at around 6-7% in commercial arbitration cases, while in sports arbitration cases the success rate reached 9-10%. The grounds for challenge raised more often in challenge procedures before the SFSC are the violation of equal treatment, violation of public policy and lack of jurisdiction. While around 9% of all challenges for lack of jurisdiction were approved, only 1% of the challenges filed on the ground of a violation of public policy were approved. In fact, only in the last five years have the first awards been set aside due to violation of public policy.

Due to the "cassatory" nature of the challenge to the Swiss Federal Supreme Court, the SFSC may dismiss or approve the challenge but generally must not decide on the substance of the matter. Hence, in principle the original arbitral tribunal will be called upon to re-decide the case (SFSC decision 4A_247/2014 of 23 September 2014, cons. 2.2). This scenario is one of the exceptions to the general rule that the mandate of the arbitrator is terminated with the issuance of the award. Should the members of the original arbitral tribunal, however, have deceased, be unattainable or should they simply refuse to serve as arbitrators for a second time, a new arbitral tribunal will have to be established (see SFSC decision 134 III 286 of 14 March 2008, cons. 2; for domestic arbitration *cf*. art. 399 CCP).

Moreover, in international arbitration in Switzerland the SFSC is competent to decide upon a party's request of revision of an arbitral award (see SFSC decision 134 III 286 of 14 March 2008, cons. 2). In principle, an arbitral award may be revised upon a party's request 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; or for a violation of the European Charter of Human Rights (art. 396(2) CCP).

For domestic arbitration art. 396 CCP makes clear that a party may file a request for revision of the arbitral award for the afore-mentioned reasons with the ordinary cantonal courts (e.g. the Court of Appeals of the Canton of Zurich).

Finally, under Swiss arbitration law, upon application of a party the arbitral tribunal has the right to correct, clarify or amend the arbitral award rendered (*cf.* for domestic arbitration art. 388 CCP).

Enforcement of the arbitration award

With regard to the enforcement of arbitral awards in 1965, Switzerland has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 ("**NYC**") as well as further bilateral treaties with individual countries, e.g. Germany, Austria, Italy, Spain, Sweden etc. Switzerland, however, is not a signatory to the European Convention on International Commercial Arbitration 1961.

Pursuant to art. IV(1) NYC, a party requesting recognition and enforcement of an award shall supply the authenticated original or a duly certified copy of the award as well as the original arbitration agreement or a duly certified copy thereof. Where these documents are not in the official language of the country, pursuant to art. IV(2) NYC the party shall provide a translation. In Swiss arbitration practice, however, these formal requirements are not to be applied very strictly: First, pursuant to the Federal Supreme Court's case law, it is sufficient if a party supplies a mere copy of an arbitral award as long as the opposing party does not challenge the authenticity of the document (see SFSC decision 5A_467/2014 of 18 December 2014, cons. 2.3). Second, the SFSC has held that an arbitral award drafted in English does not need to be translated in an official language of Switzerland (see SFSC decision 138 III 520of 2 July 2012, cons. 5).

It is the predominant view that in the light of the wording of art. V NYC ("may be refused"), it lies in the discretion of the court whether to recognise and enforce an arbitral award. While Switzerland pursues a pro-arbitration bias, the SFSC has held that recognition and enforcement of awards will be refused if the party opposing the recognition and enforcement furnishes proof that the award has not become binding upon the parties or if it has been annulled or suspended by the competent authority (see SFSC decision 5A_427/2011 of 10 October 2011, cons. 5; SFSC decision 4P.173/2003 of 8 December 2003, cons. 3.1).

If the arbitration was seated in Switzerland, international and domestic arbitral awards are considered as equivalent to final decisions rendered by state courts and, hence, automatically enforceable (*cf.* art. 190(1) SPILA).

Enforcement and recognition of international arbitral awards is generally governed by the NYC. However, the enforcement of the arbitral award will be subject to further rules depending on the nature of the claim. In Switzerland, the enforcement of monetary claims is governed by the Debt Enforcement and Bankruptcy Act ("**DEBA**"), while the enforcement of non-monetary claims is subject to arts. 335 *et seqq.* CCP.

In the context of the enforcement of a monetary claim under the DEBA, it may be of particular interest that, on the basis of an arbitral award, a creditor may request the attachment of assets of a debtor located in Switzerland in order to secure the satisfaction of its monetary claims. Irrespective of where the debtor is domiciled, provided that the creditor can identify specific assets of the debtor located in Switzerland and provided that an award has been rendered in its favour, the creditor is entitled to the attachment of assets *eo ipso* (*cf.* art. 271(1)(6) DEBA).

Investment arbitration

Switzerland is party to about 120 Bilateral Investment Treaties ("**BIT**"s) in force and has ratified a further 31 Investment Agreements, the Energy Charter Treaty being one of them. Switzerland is also party to the ICSID Convention.

Swiss BITs have been subject to arbitration proceedings in around 15 reported ICSID cases and in further investment arbitrations under the UNCITRAL Rules. To the Authors' knowledge until the end of 2015 Switzerland has never appeared as respondent in investment arbitration proceedings.

The challenge procedures as well as recognition and enforcement of arbitral awards in international investment arbitrations is governed by either the 12th Chapter of the SPILA and the pertinent provisions of the NYC or, in case of arbitral awards rendered in ICSID proceedings, by art. 52 *et seqq.* ICSID Convention.

Recent legislative developments

Currently, it is being evaluated whether there is a need to revise the 12th chapter of the SPILA in order to preserve the attractiveness of Switzerland as one of the most popular seats for international arbitrations. If the 12th chapter were to be revised, there is consensus amongst practitioners that only a soft revision should take place. To this date, it remains a matter of controversy which aspects require revision in detail. In the context of the legislative process by consultation, the following aspects have *inter alia* been raised: (i) whether the "negative effect" of competence-competence should explicitly be introduced; (ii) the need to clarify whether the determination as an international arbitration depends on the parties' domicile or residence at the time of contract conclusion or whether the determination depends on the domicile or residence of the parties to the arbitration proceedings; (iii) whether to relax the form requirements of an arbitration agreement; (iv) whether to codify the issue of extension of arbitration agreements to non-signatories; (v) the issue of the appointment mechanism in *ad hoc* multi-party arbitrations; and (vi) the issue that the legal text ought to specify both the independence and impartiality of arbitrators, while the current provision only mentions the requirement of independence, etc.

It is to be expected that the Swiss Federal Council will present a first draft of the revised 12th chapter by the end of 2016, respectively by early 2017.

Further to the current efforts to revise the 12th chapter of the SPILA, the preliminary draft of the revised law on stock corporations further promotes arbitration as a dispute resolution tool for internal disputes of stock corporations. The preliminary draft suggests a new provision according to which the articles of association could contain statutory arbitration clauses. This would mean that by becoming a shareholder, one would be bound *ipso iure* by an arbitration clause contained in the articles of association.

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