

## SWITZERLAND'S FEDERAL CODE ON PRIVATE INTERNATIONAL LAW

(December 18th, 1987)

### Chapter 12 : International Arbitration

#### Art. 176

##### *I. Scope of application; seat of the arbitral tribunal*

1. The provisions of this chapter shall apply to arbitrations if the seat of the arbitral tribunal is in Switzerland and if at least one of the parties at the time the arbitration agreement was concluded was neither domiciled nor habitually resident in Switzerland.
2. The provisions of this chapter shall not apply if the parties have excluded its application in writing and agreed to the exclusive application of the cantonal rules of procedures concerning arbitration.
3. The arbitrators shall determine the seat of the arbitral tribunal if the parties or the arbitration institution designated by them fail to do so.

#### Art. 177

##### *II. Arbitrability*

1. All pecuniary claims may be submitted to arbitration.
2. If one party to an arbitration agreement is a State or an enterprise dominated by or an organization controlled by a State, it may not invoke its own law to contest the arbitrability of a dispute or its capacity to be subject to an arbitration.

#### Art. 178

##### *1. Arbitration agreement*

1. As to form, the arbitration agreement shall be valid if it is made in writing, by telegram, telex, telecopier, or any other means of communication that establishes the terms of the agreement by a text.
2. As to substance, the arbitration agreement shall be valid if it complies with the requirements of the law chosen by the parties or the law governing the object of the dispute and, in particular, the law applicable to the principal contract, or with Swiss law.
3. The validity of an arbitration agreement may not be contested on the grounds that the principal contract is invalid or that the arbitration agreement concerns a dispute which has not yet arisen.

#### Art. 179

##### *IV. Arbitral tribunal - 1. Appointment*

1. The arbitrators shall be appointed, removed, or replaced in accordance with the agreement of the parties.
2. In the absence of such agreement, the judge at the seat of the arbitral tribunal may be called upon; he shall apply the provisions of cantonal law concerning the appointment, removal, or replacement of arbitrators by analogy.
3. If a judge is called upon to appoint an arbitrator, he must comply with this request unless a summary examination demonstrates that no arbitration agreement exists between the parties.

#### Art. 180

##### *2. Challenge of arbitrators*

1. An arbitrator may be challenged:
  - a. if he does not possess the qualifications agreed upon by the parties;
  - b. if there exist grounds for challenge in the rules of arbitration adopted by the parties;
  - or
  - c. if the circumstances permit legitimate doubt about his independence.

2. A party may challenge an arbitrator whom he nominated or in whose appointment he participated only on information discovered after the appointment. The arbitral tribunal and the other party must be informed immediately of the grounds for the challenge.
3. In the event of a dispute and if the parties have not agreed upon the procedures for challenge, the judge at the seat of the arbitral tribunal shall make the final decision.

**Art. 181**

*V. Pendency*

The arbitration proceeding shall be pending from the moment one of the parties files a claim before the sole arbitrator or the arbitrators designated in the arbitration agreement or, in the absence of such designation, if one of the parties institutes the procedure for the appointment of the arbitral tribunal.

**Art. 182**

*VI. Procedure - 1. General rule*

1. The parties may directly or by reference to rules of arbitration regulate the arbitral procedure; they may also subject the procedure to the procedural law of their choice.
2. If the parties have not regulated the procedure, it shall be fixed, as necessary, by the arbitral tribunal either directly or by reference to a law or rules of arbitration.
3. Irrespective of the procedure chosen, the arbitral tribunal shall accord equal treatment to the parties and their right to be heard in an adversarial proceeding.

**Art. 183**

*2. Provisional and conservatory orders*

1. Unless the parties have agreed otherwise, the arbitral tribunal may enter provisional or conservatory orders at the request of one party.
2. If the party concerned does not comply voluntarily, the arbitral tribunal may request the assistance of the judge with jurisdiction who shall apply his own law.
3. The arbitral tribunal or the judge may make the entry of provisional or conservatory orders subject to the receipt of appropriate security.

**Art. 184**

*3. Taking of evidence*

1. The arbitral tribunal itself shall take evidence.
2. If the assistance of the judicial authorities of the State is needed to take evidence, the arbitral tribunal or, with the consent of the arbitral tribunal, a party may request the assistance of the judge at the seat of the arbitral tribunal who shall apply his own law.

**Art. 185**

*4. Further assistance by the judge*

If further assistance of the judicial authorities is required, the judge at the seat of the arbitral tribunal shall have jurisdiction.

**Art. 186**

*VII. Jurisdiction*

1. The arbitral tribunal shall rule on its own jurisdiction.  
1bis. It shall rule on its jurisdiction irrespective of any legal action already pending before a State court or another arbitral tribunal relating to the same object between the same parties, unless noteworthy grounds require a suspension of the proceedings.
2. The objection of lack of jurisdiction must be raised prior to any defence on the merits.
3. In general, the arbitral tribunal shall rule on its jurisdiction by means of an interlocutory decision.

**Art. 187**

*VIII. Decision on the merits - 1. Applicable law*

1. The arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected. 2. The parties may authorize the arbitral tribunal to rule according to equity.

**Art. 188**

*2. Partial award*

Unless the parties have agreed otherwise, the arbitral tribunal may render partial awards.

**Art. 189**

*3. Arbitral award*

1. The arbitral award shall be rendered according to the procedure and in the form agreed upon by the parties.
2. In the absence of such agreement, the award shall be rendered by a majority or, in the absence of such majority, by the chairman alone. The award must be in writing, set forth the reasons on which it is based, and be dated and signed. The signature of the chairman is sufficient.

**Art. 190**

*IX. Finality, appeal - 1. General rule*

1. The award shall be final when communicated.
2. It can be attacked 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 in an adversarial proceeding was not respected;
  - e. if the award is incompatible with Swiss public policy.
3. An interlocutory award may only be appealed on the grounds stated in paragraph 2, letters a and b; the time limit for lodging an appeal shall commence when the interlocutory award is communicated.

**Art. 191**

*2. Court of appeal*

1. An appeal may be taken only to the Swiss Federal Supreme Court. The procedure shall be subject to Article 77 of the Law on the Federal Supreme Court of June 17, 2005.
2. The parties may agree, however, that instead of the Swiss Federal Supreme Court, the court at the seat of the arbitral tribunal shall issue a final ruling. The cantons shall designate a sole court for this purpose.

**Art. 192**

*X. Waiver of appeal*

1. If neither party has a domicile, a place of habitual residence, or a place of business in Switzerland, they may, by an express declaration in the arbitration agreement or in a subsequent written agreement, exclude all appeals against the award of the arbitral tribunal. They may also exclude an appeal only on one or several of the grounds enumerated in Article 190, paragraph 2.
2. If the parties have excluded all appeals against the award and enforcement of the award is sought in Switzerland, the New York Convention of June 10, 1958 on the Recognition and Enforcement of Foreign Arbitral Awards shall apply by analogy.

**Art. 193**

*XI. Deposit and certificate of enforceability*

1. Each party may deposit at its own expense a copy of the award with the Swiss court at the seat of the arbitral tribunal.
2. The Swiss court shall certify at the request of a party that the award is enforceable.
3. At the request of a party, the arbitral tribunal shall certify that the award was rendered in conformity with the provisions of this Code; such a certificate is equivalent to a deposit with the Court.

**Art. 194**

*XII. Foreign arbitral awards*

The recognition and enforcement of foreign arbitral awards shall be governed by the New York Convention of June 10, 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.