

**ARBITRATION LAW OF
SWITZERLAND:
PRACTICE AND PROCEDURE**

**Philippe Bärtsch
Dorothee Schramm**

JURIS

Questions About This Publication

For assistance with shipments, billing or other customer service matters, please call our Customer Services Department at:

1-631-350-2100

To obtain a copy of this book, call our Sales Department:

1-631-351-5430

Fax: 1-631-351-5712

Toll Free Order Line:

1-800-887-4064 (United States & Canada)

See our webpage about this book:
www.arbitrationlaw.com

COPYRIGHT 2014
JurisNet, LLC

All rights reserved. No part of this publication may be reproduced in any form or by any electronic or mechanical means including information storage and retrieval systems without permission in writing from the publisher.

Printed in the United States of America
ISBN 978-1-937518-38-7

JurisNet, LLC
71 New Street
Huntington, New York 11743
USA
www.arbitrationlaw.com

TABLE OF CONTENTS

ABOUT THE AUTHORS	vii
Chapter 1:	
INTRODUCTION	1
1.1 History and Current Legislation on Arbitration.....	1
1.1.1 Historical Evolution of Law Relating to Arbitration	1
1.1.2 Current Law	1
1.1.3 Law Reform Projects	5
1.1.4 Confidentiality and Publication of Awards.....	7
1.2 Arbitration Infrastructure and Practice in Switzerland	7
Chapter 2:	
CURRENT LAW AND PRACTICE	9
2.1 Arbitration Agreement.....	9
2.1.1 Validity of Arbitration Agreements	9
2.1.2 Enforcing Arbitration Agreements.....	18
2.1.3 Extension of Arbitration Agreements to Third Parties	19
2.1.4 Termination and Breach.....	23
2.2 Doctrine of Separability.....	24
2.3 Jurisdiction	25
2.3.1 The Arbitral Tribunal's Decision on Jurisdiction	25
2.3.2 Competence-Competence	27
2.3.3 Jurisdiction in the Context of Parallel Proceedings	28
2.4 Arbitrability	29
2.4.1 Notion of Arbitrability	29
2.4.2 Objective Arbitrability	29
2.4.3 Subjective Arbitrability and Capacity.....	31
2.5 Arbitral Tribunal	33
2.5.1 Appointment of Arbitrators.....	33
2.5.2 Challenge and Removal	37
2.5.3 Arbitrator Liability and Immunity	44
2.6 Conducting the Arbitration	44
2.6.1 Law Governing the Procedure	44
2.6.2 Conduct of the Arbitration	45
2.6.3 Taking of Evidence	51
2.6.4 Interim Measures of Protection.....	58

ARBITRATION LAW OF SWITZERLAND

2.6.5	Interaction between National Courts and Arbitral Tribunals	67
2.6.6	Participation of Third Parties	67
2.6.7	Consolidation of Arbitral Proceedings.....	68
2.6.8	Law and Rules of Law Applicable to the Merits	68
2.6.9	Costs.....	71
2.7	Arbitral Award.....	74
2.7.1	Types of Awards	74
2.7.2	Form Requirements.....	76
2.7.3	Decision Making.....	79
2.7.4	Effects of the Award	80
2.7.5	Correction, Supplementation, and Amendment.....	80
2.8	Challenge and Other Actions against the Award.....	80
2.8.1	Setting Aside.....	80
2.8.2	Revision of the Award	91

Chapter 3

RECOGNITION AND ENFORCEMENT OF AWARDS.....	95
3.1 Awards Rendered in Switzerland	95
3.1.1 Certificate of Enforceability.....	95
3.1.2 Enforcement Procedure.....	96
3.2 Foreign Awards	99
3.2.1 Statutory Regime	99
3.2.2 Distinction between Recognition and Enforcement.....	100
3.2.3 Application of the New York Convention by Local Courts.....	101

Chapter 4

THE SWISS RULES OF INTERNATIONAL ARBITRATION AND THE PRACTICES OF THE SWISS CHAMBERS’ ARBITRATION INSTITUTION	105
4.1 History and Background	105
4.2 Institutional Structures and Their Role.....	106
4.3 Scope of Application of the Swiss Rules.....	108
4.4 Initiating an Arbitration	108
4.5 Arbitrators.....	110
4.6 Designing and Conducting Efficient Proceedings	113
4.7 Registration Fee, Arbitrators’ Fees, Administrative Costs and Other Costs	115

TABLE OF CONTENTS

4.8 Other Salient Features of the Swiss Rules	116
4.9 Statistics and Conclusion	120
4.10 Model Arbitration Clause	121
APPENDIX	123
Major Arbitration Institutions	125
Cases	129
Bibliography	145
Swiss Rules of International Arbitration	147
INDEX	187

