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13th Edition

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I. LITIGATION

1 Preliminaries

1.1 What type of legal system has your jurisdiction got? Are there any rules that govern civil procedure in your jurisdiction?

Switzerland is a civil law jurisdiction. Accordingly, the primary sources of legal authority are written codes and statutes, whereas case law is of less importance than in common law jurisdictions.

Civil procedure in Switzerland is primarily governed by the Swiss Code of Civil Procedure ("SCCP"). The SCCP comprehensively governs civil procedure in Switzerland and domestic arbitration proceedings. Further important sources of civil procedure are the Swiss Federal Act on Private International Law ("PILA") and the Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters of 30 October 2007 ("Lugano Convention"), dealing with the question of jurisdiction in cross-border matters. The PILA, moreover, regulates international arbitration with a seat in Switzerland.

1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?

Generally speaking, the Swiss court system consists of three layers of instances: at the cantonal (state) level, the courts of first instance and the upper courts (second instance); and above them, the Swiss Federal Supreme Court as the third and last instance. In specific areas of the law, however, a single instance (e.g., the upper court or a specialist court) decides a dispute on the cantonal level (with the possibility to appeal to the Federal Supreme Court). The structure of the (first and second instance) civil court system varies from canton to canton.

In general, the regular cantonal courts have jurisdiction in all areas of the law, including federal law. Cantons are, however, free to have specialist courts, such as a court for labour law matters, a court for landlords and tenants, and specialised commercial courts. While most cantons have specialist courts for labour and tenant law matters, only the cantons of Zurich, Bern, St. Gallen and Aargau have a specialised commercial court.

In addition, the Federal Patent Court decides all civil law disputes concerning patents on a first instance level. Its jurisdiction and organisation is governed by the Patent Court Act ("PatCA"), whereas the proceedings before the Federal Patent Court are generally governed by the SCCP.

The Federal Supreme Court, as Switzerland's highest court, safeguards the application of federal and constitutional law. Proceedings before the Swiss Federal Supreme Court are governed by the Swiss Federal Tribunal Act.

1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?

The SCCP provides for three types of proceedings: (i) ordinary proceedings; (ii) simplified proceedings; and (iii) summary proceedings. Each of the three types of proceedings can generally be divided into the following stages, before a court of first instance:

- the assertion stage, where the parties must plead their arguments and offer evidence available to them;
- the evidentiary stage, where the court takes the evidence offered by the parties;
- the closing stage, where the parties may comment on the result of the evidentiary phase and on the merits of the case; and
- the issuance of the judgment.

Simplified proceedings apply to small cases (where the value in dispute **does not exceed** CHF 30,000), as well as to cases before special courts for labour law, landlord and tenant matters and consumer disputes, and are, compared to ordinary proceedings, less formal, favour oral submissions, and give a more active role to courts. Summary proceedings, which apply to urgent requests and requests for provisional measures, to so-called '**clear cases**', to specific proceedings under the Federal Debt Collection and Bankruptcy Act ("DEBA"), and to numerous other matters explicitly listed in the SCCP, go even further in terms of simplification and expediency. A specificity of summary proceedings is that the evidence available is limited to documents. Other means of evidence are only admissible if the taking of such evidence does not substantially delay the proceedings, or is required by the purpose of the proceedings, or if the court has to establish the facts *ex officio*.

In addition to these three main types of proceedings, there are special proceedings in marital law (e.g. divorce proceedings), proceedings relating to children in family law matters and proceedings relating to same-sex partnerships.

The average length of proceedings before first instance courts is between one and two years in commercial cases, and approximately up to one year in smaller and simpler cases, as well as cases before specialist courts for labour law and for landlord and tenant matters. In complex cases, the duration of the proceedings may be longer.

1.4 What is your jurisdiction's local judiciary's approach to exclusive jurisdiction clauses?

Under the SCCP and the Lugano Convention, parties may agree on the court that shall have jurisdiction *ratione loci* over an existing or future dispute arising from a particular legal relationship. Within the scope of the PILA, however, an exclusive jurisdiction clause is only admissible for pecuniary disputes ("*vermögensrechtliche Streitigkeiten*").

Unless the parties' agreement provides otherwise, the agreed court's jurisdiction is exclusive. Generally, the agreement must be in writing or in any other form allowing it to be evidenced by text. The parties' freedom to agree on the competent court *ratione loci* is excluded or limited in a few instances only (e.g., a consumer cannot waive his statutory place of jurisdiction in advance).

The designated Swiss court must honour an exclusive jurisdiction clause, unless none of the parties is domiciled in a Member State of the Lugano Convention, and the law applicable to the merits of the case is not Swiss law.

1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

Court fees and attorneys' fees are regulated by the cantons individually. In Switzerland, litigation costs are generally reasonable. In pecuniary disputes, the court and attorneys' fees mainly depend on the amount in dispute. Other factors, such as the type and course of the proceedings and the complexity of the case, are also taken into consideration. Currently, Swiss courts may – and usually do – order a claimant to make an advance payment up to the amount of the expected court costs. This might change, however, since in the presently ongoing revision of the SCCP, the amount of the advance payment should be reduced to a maximum of half of the expected court costs.

As regards security for costs, in certain cases and upon the respondent's request, Swiss courts may order the claimant to provide security for the respondent's attorneys' fees. This may be the case if the claimant has no residence in Switzerland, appears to be insolvent, or owes costs from previous proceedings. To the extent, however, that the Hague Convention of 1954 on Civil Procedure, or of 1980 on International Access to Justice, or other treaties apply, which forbid security for costs for the sole reason of a claimant's foreign domicile, Swiss courts cannot order a claimant to provide security for costs on that ground.

In general, all expenses arising from the litigation are to be borne by the losing party. If no party fully prevails, the court will divide the costs proportionally between the parties.

There are no rules on costs budgeting in Switzerland.

1.6 Are there any particular rules about funding litigation in your jurisdiction? Are contingency fee/conditional fee arrangements permissible?

Following a decision of the Swiss Federal Supreme Court in 2004, third-party litigation funding is, in principle, admissible in Switzerland.

Agreements on contingency fees are not permissible for proceedings before Swiss courts. On the other hand, as long as the hourly fee covers the attorney's costs, additional incentive payments can be agreed provided that the incentive payment is not so big that it would affect the attorney's independence.

1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

In general, the assignment of a claim is permitted and valid, unless one of the following exceptions apply:

- In few instances, the law forbids the assignment (mainly with regard to employment contracts, claims of the borrower or tenant regarding the usage of the leased item, or claims connected to a person's status as heir).
- The parties agreed that a claim shall not be assigned.
- Moreover, an assignment is prohibited if a claim is so closely connected to the person of the assignor that an assignment would significantly alter the existence, the content or the purpose of the claim.

The Swiss Federal Supreme Court, in principle, allows litigation funding through a third party. It is important to note, however, that litigation funding must not unduly interfere in the client-attorney relationship. The attorney's independence needs to be ensured at all times. Therefore, the attorney cannot provide the funding himself: it has to be provided by an independent third party.

1.8 Can a party obtain security for/a guarantee over its legal costs?

For the preconditions to obtain security for/a guarantee over legal costs, see question 1.5.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

The SCCP generally requires a claimant to initiate conciliation proceedings before filing a claim with the first instance court. However, there are several exceptions to this rule, for example, in summary proceedings, or if a dispute falls within the jurisdiction of a commercial court. Furthermore, instead of conducting conciliation proceedings, the parties may agree to conduct mediation.

If no amicable settlement is reached, the conciliation authority grants a temporary authorisation to proceed with the claim ("*Klagebewilligung*"). Generally speaking, a claimant must file the claim with the competent court within three months from the date of notification of this authorisation. Once the authorisation expires, the claimant must commence new conciliation proceedings if they wish to pursue the claim.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

Swiss law treats limitation periods as a substantive law issue. The general limitation period for contract claims is 10 years from the date of maturity. However, following the recent revision of the Swiss Code of Obligations, as of 1 January 2020 the limitation period for contractual claims will be 20 years in case of the death of a human being or the causation of bodily injury. Further, for certain types of contractual claims, the limitation period is five years (e.g., claims for periodic payments or claims of employees) or less (e.g., two years for warranty claims under a contract for the sale of goods).

Tort claims used to become time-barred one year after the aggrieved party obtained knowledge of the damage and of the tortfeasor. However, after the revision of the Swiss Code of Obligations, as of 1 January 2020 this limitation period will be three years. In any event, such claims are time-barred 10 years after the occurrence of the damaging event, unless the tort resulted in the death or bodily injury of a human being, in which case this limitation period will be 20 years (as of 1 January 2020). The limitation period for claims based on unjust enrichment is three years after the aggrieved party obtained knowledge of its claim. In any event, such claims are time-barred after 10 years since the claim arose.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?

Proceedings are commenced by the claimant submitting the statement of claim with the court or the request for conciliation with the conciliation authority. In Switzerland, the courts take care of the service of submissions, summons, rulings and other decisions on the opposing party. Service of summons, rulings and other decisions are effected by (registered) mail or other means against confirmation of receipt. Other documents may be served by regular mail. With the consent of the person concerned, service may also be effected electronically.

Service is accomplished when the document has been received by the addressee or an authorised person on his behalf. Service is generally also deemed to have been effected on the seventh day after the failed attempt to serve a registered letter, or on the day of refusal to accept service in case of personal service.

Swiss courts can instruct foreign parties to provide a domicile for service in Switzerland. If service must be effected outside Switzerland, the channels of judicial assistance as per the Hague Conventions of 1 March 1954 on Civil Procedure and of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters or other treaties must be used.

3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?

In order to secure monetary claims, a creditor can seek to attach the debtor's assets in accordance with the DEBA. The creditor must show to the court that, *prima facie*:

- the creditor has a claim;
- a statutory ground for attachment exists (e.g., foreign domicile of the debtor, provided that the claim has a sufficient connection with Switzerland or is based on a recognition of debt; the debtor is attempting to conceal assets); and
- the debtor has assets which are situated in Switzerland.

A court may also grant interim measures for all other claims, if the applicant shows credibly that a right to which it is entitled has been violated or a violation is anticipated, and that in the absence of the requested interim measure it would suffer irreparable harm. Moreover, the applicant must show that it is likely to prevail on the merits of the underlying cause of action. In cases of exceptional urgency, interim measures may be granted *ex parte*.

3.3 What are the main elements of the claimant's pleadings?

The statement of claim to be filed by the claimant must be dated and signed and, in essence, contain the following:

- the prayers for relief;
- a statement of the value in dispute; and
- a detailed account of all factual allegations and of the evidence offered for each allegation.

The statement of claim usually contains legal arguments as well.

3.4 Can the pleadings be amended? If so, are there any restrictions?

Reductions of the prayers for relief (with prejudice) are permissible at any time. Other amendments of the prayers for relief (including additional claims) are only allowed if: (i) they are submitted with the party's second round of pleadings; (ii) they are subject to the same type of procedure and venue; and (iii) the new claim is factually closely connected to the original action, or the opposing party agrees with the amendment. After the second round of pleadings, no amendments are admissible, unless they are based on new facts and evidence and the prerequisites mentioned before (ii)–(iii) are met.

3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

Pleadings submitted before the competent court can only be withdrawn without having a *res judicata* effect if the claim has not yet been served on the defendant, or if the defendant agrees to the withdrawal.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring a counterclaim(s) or defence of set-off?

The main elements of a statement of defence are essentially the same as mentioned above under question 3.3. Moreover, the statement of defence must state which of the claimant's factual allegations are accepted and which are disputed.

The respondent may file a counterclaim in the statement of defence if the court is competent to deal with the counterclaim (either because of a jurisdiction clause or a statutory ground, or because there is a factual connection between the main claim and the counterclaim), and if the counterclaim is subject to the same type of procedure as the main claim. In the presently ongoing revision of the SCCP, it is intended that a factual connection between the main claim and the counterclaim should always be required. For Euro-international disputes, the Lugano Convention requires that the counterclaim is based on the same contract or facts as the main claim.

Set-off defences are available in Switzerland. A set-off defence should be raised with the respondent's second pleading at the latest.

4.2 What is the time limit within which the statement of defence has to be served?

The court sets a time limit for filing the statement of defence. In deciding on the time limit, the court considers the volume

of the statement of claim and the complexity of the case. The average time range for the filing of the statement of defence is 20 to 60 days.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

A party may notify a third party of the dispute ("*Third Party Notice*" / "*Streitverkündung*") if, in the event of losing the case, the party might take recourse against or be subject to recourse by the third party. The notified third party may decide: (i) not to react to the notification; (ii) to intervene in favour of the notifying party; or (iii) with consent of the notifying party, to proceed with the litigation in the place of the latter. As a general rule, if the notifying party loses the case, the decision will also have an effect on the notified party. The notified party's liability will be the subject of a subsequent litigation. In ordinary proceedings, it is also possible for the notifying party to integrate the litigation between it and the notified party into the main proceedings, by filing a claim against the notified party in the same proceedings ("*Third Party Action*" / "*Streitverkündungsklage*").

4.4 What happens if the defendant does not defend the claim?

If the statement of defence is not filed in time, the court will set a short grace period. If the respondent again fails to submit the statement of defence, the court will decide the case if it is in a position to do so. Otherwise, the court shall summon the parties to the main hearing. If the defendant fails to attend the hearing, the court shall decide on the basis of the submissions on file and, as a general rule, may rely on the claimant's representations.

4.5 Can the defendant dispute the court's jurisdiction?

The court's jurisdiction can be disputed. However, it is important to note that as soon as the defendant submits arguments on the merits without disputing the court's jurisdiction in the first place, the defendant enters an appearance and submits to the court's jurisdiction.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

A joinder is available if two or more persons are in a legal relationship that calls for one single decision with effect for all of them (mandatory joinder), or if the rights and duties of two or more persons result from similar circumstances or legal grounds (voluntary joinder). However, voluntary joinder is excluded if the individual claims are subject to different types of procedure.

For the notification of third parties, see question 4.3.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

Swiss courts have discretion to consolidate two sets of proceedings if the facts are closely connected, and if the consolidation simplifies the proceedings.

5.3 Do you have split trials/bifurcation of proceedings?

In order to simplify the proceedings, Swiss courts have discretion to limit the proceedings to individual issues or prayers for relief, to order the separation of jointly-filed actions, or to separate the counterclaim from the main proceedings.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

Courts allocate the cases among the judges in accordance with their internal policies. Cases should be distributed "blindly" or "mechanically" between the different judges of the court in order to ensure independence. Some courts take a flexible approach and distribute the cases randomly, but in consideration of the strengths and specialised areas of the judges.

6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

The courts have the power to directly and efficiently manage the proceedings pending before them. Swiss courts namely have the power to consolidate separately filed claims, to separate jointly-filed actions, or to bifurcate proceedings. If factually connected claims are pending before different courts, the subsequently seized court may transfer the case to the court seized first, given the latter court's agreement. Moreover, at any time during the proceedings, the courts have the power to facilitate an attempt at amicable settlement.

During the proceedings, the parties can file procedural motions or apply for interim measures (e.g., preservation of evidence, request for a stay). The prerequisites for interim measures to be granted during proceedings are the same as set out under question 3.2. Usually, the costs for such applications are allocated at the end of the proceedings in accordance with the general principle that costs should follow the event.

6.3 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court's orders or directions?

During hearings, if any person violates decency in court or disrupts the hearing, the court may order the person to pay a reprimand or a disciplinary fine. The court may also exclude the person from the hearing.

Other than that, as far as the parties are concerned, disobeying the procedural duty to cooperate does not result in sanctions or constraints. However, the party risks procedural disadvantages, such as the drawing of adverse inferences or a default judgment. If a third party refuses to cooperate without justification, the court may order disciplinary fines or adopt other measures. Furthermore, disciplinary fines and criminal sanctions may be imposed for wilfully lying during the examination of the parties or for not telling the truth while testifying.

6.4 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?

A court may order a party to rectify formal defects of its written submission; e.g., if the submission is incomprehensible or incoherent. If the defect is not rectified within the deadline set by the court, the submission will not be taken into consideration. Courts may also not take into consideration any querulous or abusive submissions. Generally, late submissions will also be disregarded.

6.5 Can the civil courts in your jurisdiction enter summary judgment?

Parties cannot move for a summary judgment and the courts do not have the possibility to issue a summary judgment as known in the U.S., for example. However, after reviewing the parties' submissions and documentary evidence, a court can issue its judgment on the merits of the case without hearing witnesses or taking other evidence, if it can anticipate the assessment of evidence (i.e., in cases where no material issues of fact remain to be proven or where the evidence offered is irrelevant).

6.6 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?

Once a court has decided that all procedural requirements are met, it may not discontinue the proceedings without rendering a decision on the merits.

However, Swiss courts may stay the proceedings – upon request or *sua sponte* – if appropriate. This may be the case if the decision depends on the outcome of other proceedings or if the parties are engaged in settlement negotiations.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?

The SCCP does not provide for a pre-trial discovery phase. That being said, in specific and narrowly described circumstances, the taking of evidence as a form of precautionary measure pre-action is possible if: (i) the law grants the right to do so; or (ii) the applicant shows credibly that the evidence is at risk or that it has a legitimate interest. Moreover, during proceedings, the parties may request the production of a specific document which is in the possession of the opposing party or a third party.

The SCCP does not contain any special rules concerning the disclosure of electronic documents. Neither do acceptable practices for conducting e-disclosure, such as predictive coding, exist. As is the case with traditional documents, disclosure may be refused if the electronic document in question falls under a privilege, and parties may ask for protective measures to be issued by the courts where business and trade secrets are involved.

7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

Parties and third parties have a duty to cooperate in the taking of evidence. In particular, they have the duty to produce documents in their possession.

Swiss law, however, provides for certain privilege rights in order to protect family members of a party and certain professionals (e.g., attorneys, physicians) from a request for disclosure or from giving testimony. Currently, in-house lawyers may not invoke the legal profession privilege. However, this may change, since in the presently ongoing revision of the SCCP, it has been proposed to extend the legal profession privilege to in-house lawyers.

Generally speaking, privilege may only be invoked by the person bound by the privileged secret (e.g., the attorney). However, documents which are in the possession of the client because they have been sent to them by the attorney are also privileged.

7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

Third parties have a duty to cooperate in the taking of evidence, unless they can invoke a legal privilege. This includes, in particular, the duty to truthfully testify as a witness, to produce physical records where required, or to allow an examination of their person or property by an expert.

7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?

Only courts can order a witness to appear, or a party or a third party to produce documents. Thus, unlike during disclosure in, for example, U.S. proceedings, the court is always involved.

7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?

Swiss courts must take the appropriate measures to protect legitimate interests of any party or third parties, e.g., business secrets. For instance, the court may restrict access to certain documents.

8 Evidence

8.1 What are the basic rules of evidence in your jurisdiction?

As a general rule, the burden of proving the existence of an alleged fact rests on the party that derives rights from that fact. The Swiss courts are free in assessing the evidence.

8.2 What types of evidence are admissible, and which ones are not? What about expert evidence in particular?

The SCCP provides for the following types of evidence:

- witness testimony;
- documents;
- expert opinions;
- written statements ("*schriftliche Auskunft*");
- inspections; and
- party assertions and testimony ("*Partei- und Beweisaussage*").

8.3 Are there any particular rules regarding the calling of witnesses of fact, and the making of witness statements or depositions?

Parties must name the witnesses on which they rely in their submissions. The court will then order the witnesses to appear and testify orally. Witnesses will be questioned by the court, but the parties have the right to ask additional questions. However, there is no cross-examination of witnesses. Written witness statements or depositions are generally not admissible evidence. Furthermore, only a person who is not a party can be a witness, and it is not admissible to prepare a witness before the hearing.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Are there any particular rules regarding concurrent expert evidence? Does the expert owe his/her duties to the client or to the court?

Upon request or *ex officio* and after hearing the parties, a Swiss court may obtain an opinion from an expert witness. The court will instruct the expert and submit the relevant questions to him/her. The parties will have the opportunity to comment on the questions to be put to the expert. Thereafter, the court will provide the expert with the necessary files and set a deadline for the submission of the opinion. After the expert has rendered the opinion, the parties may ask for explanations or submit additional questions. The expert has a contractual relationship with the court and owes his/her duties to the court.

Upon request or *ex officio*, expert witnesses may be confronted with each other or with the parties.

Parties are free to submit reports prepared by their own experts. However, such reports are not given more evidentiary weight than party pleadings.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

Courts can render interim decisions, final decisions or partial decisions. Interim decisions are typically rendered to decide upon the competence of a court or questions regarding the statute of limitations. Interim decisions allow for substantial saving of time and costs, as they are used where a higher court could potentially issue a contrary decision that would put an immediate end to the proceedings.

The final decision is the actual decision on the merits. Their content depends largely on the claims submitted by the parties, i.e., whether the parties asked for a judgment for damages, for a specific performance, or for a declaratory judgment. Partial decisions are a specific kind of final decision, namely decisions with regard to only part of a claim.

Moreover, courts can issue procedural orders to manage the proceedings.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

Swiss courts cannot award punitive damages. Damages are strictly compensatory and courts may thus only grant damages in the amount of the incurred loss.

Unless the parties have stipulated otherwise, a statutory interest rate of five per cent *per annum* applies to monetary claims. A court will only award interests in the presence of a respective prayer for relief.

As regards costs, see question 1.5.

9.3 How can a domestic/foreign judgment be recognised and enforced?

The recognition and enforcement of foreign judgments depends on the country where the judgment was rendered and on whether or not that country has signed a treaty with Switzerland. For example, a judgment rendered in a Member State of the Lugano Convention will be recognised and enforced in Switzerland without review of the substance of the judgment, save for certain narrowly defined exceptions. In absence of an international instrument, the recognition and enforcement is governed by the PILA. Under the PILA, final decisions rendered by a competent court will generally be recognised and enforced, unless they violate fundamental principles of Swiss law.

The rules governing the enforcement of any judgment, domestic or foreign, also depend on the nature of the judgment. The rules for the enforcement of monetary judgments are set out in the DEBA. According to the DEBA, monetary judgments are enforced in an expedited procedure. The enforcement of non-monetary judgments is subject to the provisions of the SCCP.

9.4 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

Generally speaking, a decision of a first instance court may be appealed to the upper cantonal court within 30 days of service of the decision. The threshold amount in dispute for an appeal in pecuniary matters is CHF 10,000. With some exceptions, an appeal has suspensive effect. The grounds for appeal are the incorrect application of the law or the incorrect establishment of the facts of the case.

A decision of an upper cantonal court may be appealed to the Swiss Federal Supreme Court if the amount in dispute is at least CHF 30,000 (CHF 15,000 in labour and tenant law matters), or if the matter involves a question of law of fundamental significance. As a general rule, the appeal must be filed within 30 days after notification. The Swiss Federal Supreme Court only re-examines questions of law. An appeal based on erroneous fact finding may only be made where the lower court's findings are obviously wrong or in violation of Swiss law.

10 Settlement

10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

Subject to certain exceptions (see above under question 2.1), under the SCCP, a claimant is generally required to initiate conciliation proceedings before filing a claim with the first instance court. Instead of conducting conciliation proceedings, the parties may agree to mediate. If no amicable settlement is reached, the conciliation authority grants a temporary authorisation to proceed with the claim ("*Klagebewilligung*"; see also question 2.1 above).

Courts may also hold instruction hearings at any time during the proceedings. Such hearings are mainly held to prepare for the main hearing or to attempt to reach a settlement.

II. ALTERNATIVE DISPUTE RESOLUTION

1 General

1.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

Arbitration has a long-standing tradition in Switzerland. Swiss courts are known to respect and enforce arbitration agreements and awards. Arbitration is the only alternative to court litigation where it is possible to achieve a final, binding and enforceable resolution of a dispute. Switzerland is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 ("New York Convention").

Mediation has traditionally been used as a means of (non-binding) dispute resolution in family law matters. Recently, mediation has become more popular for the amicable resolution of commercial disputes. Generally speaking, in mediation proceedings an impartial third party seeks to help resolve a dispute by facilitating settlement negotiations. The mediator has no authority to impose a binding solution on the parties. Swiss courts cannot order parties to resort to mediation, but they can encourage them to do so. If a settlement agreement between the parties has been reached, the parties may jointly request that the agreement be approved by either the conciliation authority or the court (depending on when the mediation has been conducted). Such approved agreement has the same effect as a legally binding decision. Switzerland has not yet signed the Convention on International Settlement Agreements Resulting from Mediation ("Singapore Convention").

Expert determination (frequently used in relation to price adjustment disputes in M&A transactions) and proceedings before an Ombudsman (for example, in banking matters) are further means of alternative dispute resolution available in Switzerland.

1.2 What are the laws or rules governing the different methods of alternative dispute resolution?

As far as arbitration is concerned, a distinction has to be made between domestic and international arbitration. International arbitration, i.e., an arbitration where at least one of the parties has its residency outside Switzerland when concluding the arbitration agreement, is governed by the 12th Chapter of the PILA. Rules governing domestic arbitration are set out in the SCCP.

As regards mediation, the SCCP only governs the relationship between mediation and state court litigation, but does not regulate the process itself. The parties are thus free to structure the mediation as they see fit. On 1 July 2019, the new Swiss Rules of Mediation of the Swiss Chambers' Arbitration Institution ("SCAI") came into force, which can be used by the parties of a mediation.

1.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

As a general rule, any pecuniary dispute may be submitted to international arbitration. Domestic arbitration and mediation is available for all claims that parties may freely dispose of. Claims that first and foremost affect a party's personal rights cannot be arbitrated. This includes marriage, paternity, child adoption, divorce or separation.

1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, force parties to arbitrate when they have so agreed, or order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

Swiss courts may assist with the constitution of an arbitral tribunal, e.g., appointment, removal or replacement of arbitrators. The state judges' assistance can also be requested if a party does not voluntarily comply with provisional measures ordered by the arbitral tribunal. Moreover, Swiss courts will assist in the taking of evidence or provide any further assistance.

If a respondent invokes an arbitration agreement, a Swiss court must decline to hear the case, unless the agreement to arbitrate is null and void, ineffective or incapable of being performed, or if the tribunal cannot be constituted due to reasons attributable to the respondent.

A Swiss court cannot order the parties to mediate but it can recommend mediation to the parties at any time.

1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

Arbitration awards are binding and enforceable in Switzerland. International and domestic arbitral awards can only be appealed before the Swiss Federal Supreme Court. However, in domestic arbitration, the parties are free to agree to the jurisdiction of the high court of the canton at the seat of the arbitration instead. The grounds for attacking an arbitral award are limited to *ordre public* (international awards), arbitrariness (domestic awards) and certain essential procedural rights (domestic and international awards).

There are no sanctions for refusing to mediate since mediation is voluntary in Switzerland. Settlements reached through mediation are generally treated as extra-judicial settlement agreements and have the binding force of an ordinary contract. To the extent mediation was conducted in the context of judicial proceedings, the settlement agreement may be ratified by the Conciliation Judge or the court. In this case, the settlement agreement has the effect of a final and binding decision.

2 Alternative Dispute Resolution Institutions

2.1 What are the major alternative dispute resolution institutions in your jurisdiction?

The most widely known Swiss provider of arbitration and mediation is the Swiss Chamber's Arbitration Institution (www.swiss-arbitration.org). This institution has adopted unified rules of arbitration (Swiss Rules of International Arbitration) and mediation (Swiss Rules of Mediation) and provides respective services.

Most Swiss arbitration practitioners are members of the Swiss Arbitration Association ("ASA"; www.arbitration-ch.org), which is a non-profit association committed to promoting arbitration.

Besides the Swiss Chamber's Arbitration Institution, other private institutions offer mediation services, e.g., the Swiss Chamber of Commercial Mediation (skwm.ch), the Swiss Mediation Association (www.mediation-ch.org) and also the Swiss Bar Association (www.sav-fsa.ch).

Matthew Reiter heads Bär & Karrer's litigation practice. He specialises in litigation and arbitration and has extensive experience in a wide range of state court and administrative proceedings (including criminal investigations, white-collar crimes, enforcement proceedings and international judicial assistance), but focuses on the resolution of large domestic and international commercial disputes.
Matthew Reiter has successfully represented clients in numerous domestic and international arbitrations, both in *ad hoc* and institutional proceedings (primarily ICC, ZCC/Swiss Rules), especially relating to joint ventures and shareholders' agreements, large construction contracts, M&A transactions and supply agreements.
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