PANORAMIC

ARBITRATION

Switzerland

LEXOLOGY

Arbitration

Contributing Editors

Chloë Edworthy, James Popperwell, Lois Horne, Mark Lawrence and Jonathan Pratt

Macfarlanes LLP

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Contributors

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Bär & Karrer Ltd

Nadja Jaisli Kull nadja.jaisli@baerkarrer.ch
Yves Tjon-A-Meeuw yves.tjon-a-meeuw@baerkarrer.ch
Romana Weinöhrl-Brüggemann romana.weinoehrl-brueggemann@baerkarrer.ch

LAWS AND INSTITUTIONS

Multilateral conventions relating to arbitration

Is your jurisdiction a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

Switzerland is a contracting party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). It entered into force on 30 August 1965. Switzerland originally made a reciprocity reservation under article I(3) of the New York Convention, but the Federal Council later formally withdrew it by Federal Decision dated 17 December 1992 (AS 1993 2434).

Switzerland is also a contracting party to the Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927. However, according to article VII(2) of the New York Convention, these treaties cease to have effect between contracting states to the New York Convention. As a consequence, the Geneva Convention has had no effect since 2007.

Finally, Switzerland is also a contracting party to the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965.

Law stated - 23 January 2025

Bilateral investment treaties

Do bilateral investment treaties exist with other countries?

Switzerland has signed over 110 bilateral investment treaties. The most recent bilateral investment treaty is one with Indonesia, which entered into force on 1 August 2024.

Law stated - 23 January 2025

Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

Swiss law distinguishes between international and domestic arbitration. Chapter 12 of the Federal Statute on Private International Law applies to international arbitration (ie, where at least one of the parties has its domicile, regular place of residence or corporate seat outside of Switzerland at the time it enters into the arbitration agreement). Part 3 of the Civil Procedure Code (article 353 et seq) applies to domestic arbitration (ie, where none of the parties has its domicile or regular place of residence outside Switzerland at the time the arbitration agreement is concluded).

The parties to a domestic (respectively international) arbitration are free to agree in the arbitration agreement or separately in writing or in any other form that allows the agreement to be evidenced by text that the provisions of Chapter 12 of the Federal Statute on Private International Law (respectively Part 3 of the Civil Procedure Code) shall apply to their arbitral proceedings (article 353(2) of the Civil Procedure Code and article 176(2) of the Federal Statute on Private International Law).

Law stated - 23 January 2025

Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

Swiss arbitration law is not based on the UNCITRAL Model Law. Chapter 12 of the Federal Statute on Private International Law applicable to international arbitration, which was drafted around the same time as the UNCITRAL Model Law, does not substantially differ from the latter. It is, however, significantly shorter in comparison with the UNCITRAL Model Law. Part 3 of the Civil Procedure Code applicable to domestic arbitration is more detailed and goes back largely to the Inter-Cantonal Concordat on Arbitration of 1969.

Law stated - 23 January 2025

Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

As far as Chapter 12 of the Federal Statute on Private International Law is concerned, the following provisions are considered to be mandatory:

- objective arbitrability (article 177(1));
- subjective arbitrability of a state, or an enterprise held by or an organisation controlled by a state (article 177(2));
- the written form of the arbitration agreement (article 178(1));
- the independence and impartiality of arbitrators (article 180(1)(c));
- the possibility for a party to challenge the appointment of an arbitrator it has nominated based on grounds that come to its attention after such appointment (article 180(2));
- the principle of lis pendens (article 181);
- the equal treatment requirement and the right to be heard in an adversarial procedure (article 182(3)); and
- judicial assistance (article 185).

In addition, the action for the annulment of arbitral awards (article 190(2) of the Federal Statute on Private International Law) is considered mandatory in international arbitration

if one of the parties is Swiss. If none of the parties to the arbitration agreement has its domicile, habitual residence or corporate seat in Switzerland, the parties can exclude the right to appeal the decision by party agreement according to article 192(1) of the Federal Statute on Private International Law. However, according to the revised article 192(1) of the Federal Statute on Private International Law, which entered into force on 1 January 2021, revision pursuant to article 190(a)(1)(b) (ie, if the award was influenced by a crime or a misdemeanour) cannot be waived.

Law stated - 23 January 2025

Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

The parties are free to choose the rules of law applicable to their conflict. According to article 187(1) of the Federal Statute on Private International Law, a dispute is decided according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection.

The parties can also authorise the tribunal to decide ***ex aequo et bono*** (article 187(2) of the Federal Statute on Private International Law).

Law stated - 23 January 2025

Arbitral institutions

What are the most prominent arbitral institutions situated in your jurisdiction?

The most prominent arbitration institutions situated in Switzerland are the following:

- the Swiss Arbitration Centre (www.swissarbitration.org; Boulevard du Théâtre 4, 1204 Geneva, Switzerland, with offices in Geneva, Zurich and Lugano);
- the Court of Arbitration for Sport (CAS) (www.tas-cas.org; Palais de Beaulieu, Avenue Bergières 10, 1004 Lausanne, Switzerland); and
- the Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO) (www.wipo.int/amc/en/center; 34, chemin des Colombettes, 1211 Geneva 20, Switzerland).

The Swiss Arbitration Centre administers arbitration proceedings under the Swiss Rules of International Arbitration. The revised Swiss Rules took effect on 1 June 2021 and are a flexible set of rules under which the parties are free to designate their arbitrators and select the applicable law, the seat of the arbitration and the language of the proceedings.

CAS arbitrations are governed by the Code of Sports-related Arbitration, according to which they have their seat in Lausanne, Switzerland. CAS operates with a system of a closed list of arbitrators.

The WIPO Arbitration and Mediation Center administers arbitrations under the WIPO Arbitration Rules. The latter are, owing to their provisions on confidentiality and technical and experimental evidence, of special interest to parties to intellectual property disputes.

Law stated - 23 January 2025

ARBITRATION AGREEMENT

Arbitrability
Are there any types of disputes that are not arbitrable?

According to article 177(1) of the Federal Statute on Private International Law, in international arbitration, any dispute of financial interest may be the subject of arbitration. This includes monetary claims relating to labour matters, marital property matters, disputes between heirs and intellectual property matters, as well as antitrust and competition law matters. Pursuant to article 354 of the Civil Procedure Code, in domestic arbitration, any claim over which the parties may freely dispose may be the subject of an arbitration agreement.

By contrast, claims that first and foremost affect a party's personal rights – such as marriage, paternity, child adoption, divorce or separation – are not arbitrable. Likewise, claims in bankruptcy law that are strictly part of the debt collection procedure are considered to be non-arbitrable.

Law stated - 23 January 2025

Requirements
What formal and other requirements exist for an arbitration agreement?

Swiss law distinguishes between formal and substantive validity.

Regarding formal validity, Swiss law requires the arbitration agreement to be in writing. Signature by the parties is not required. The written form requirement is considered to be met if the arbitration agreement is concluded in writing or in any other form allowing it to be evidenced by a text (see also revised article 178(1) of the Federal Statute on Private International Law, which entered into force on 1 January 2021, and article 358 of the Civil Procedure Code). Accordingly, the form requirements can also be fulfilled for arbitration agreements in general terms and conditions. It is not settled whether both parties must adhere to the formal requirement of article 178(1) of the Federal Statute on Private International Law, or whether it is enough that a written offer to arbitrate by one party is accepted orally or tacitly by the other.

Regarding substantive validity, article 178(2) of the Federal Statute on Private International Law provides that an arbitration agreement is valid if it conforms to the law chosen by the parties, the law governing the subject matter of the dispute or Swiss law. It is sufficient if the arbitration agreement is valid under any of these three substantive laws.

If substantive validity is examined under Swiss law, the parties must have the capacity to enter validly into an arbitration agreement (subjective arbitrability), and the subject matter of the dispute must be arbitrable (objective arbitrability).

In addition, the parties' consent with regard to the essential elements of the arbitration agreement is required. This requires that the parties express their intention to submit their dispute to arbitration and that the arbitration agreement specifies the object or the legal relationship subject to arbitration.

Law stated - 23 January 2025

Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

An arbitration agreement is valid and enforceable if it conforms either to the law chosen by the parties, to the law governing the subject matter of the dispute – in particular ,the main contract – or to Swiss law (article 178(2) of the Federal Statute on International Private Law).

Since the doctrine of separability applies in Swiss law (article 178(3) of the Federal Statute on Private International Law), the avoidance, rescission or termination of a contract will generally not affect the validity of an arbitration agreement contained therein. However, there may be instances in which the main contract as well as the arbitration agreement are subject to the same grounds for invalidity.

While the death of a party will usually not cause the arbitration agreement to become inoperative, legal incapacity to enter into an arbitration agreement may be a ground for the arbitration agreement to be invalid. In this context, under Swiss law, a state or state-owned entity cannot invoke its own law to contest its capacity to arbitrate (article 177(2) of the Federal Statute of Private International Law).

Law stated - 23 January 2025

Separability

Are there any provisions on the separability of arbitration agreements from the main agreement?

The principle of the separability of the arbitration agreement is set out in article 178(3) of the Federal Statute on Private International Law. The validity of an arbitration agreement cannot be challenged on the grounds that the main contract between the parties is invalid.

However, this does not preclude the grounds for nullity of the main contract from also affecting the arbitration agreement.

Law stated - 23 January 2025

Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

In general, an arbitration agreement is binding only on the parties to the original agreement. Deviating from that general rule, a third (non-signatory) party may nevertheless become

bound by the arbitration agreement based on several legal extension theories under Swiss law, such as the principle of confidence (***Vertrauensprinzip***), assignment, assumption of a debt, agency or the piercing of the corporate veil (see, eg, decision of the Swiss Federal Supreme Court 4A_124/2020 dated 13 November 2020, cons 3.3.1). In particular, the extension of arbitration agreements to non-signatories may be justified under Swiss law where the third party explicitly or implicitly expressed its intention to be bound by the arbitration agreement (eg, by interfering in the conclusion or performance of the relevant contract).

Law stated - 23 January 2025

Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

The international arbitration law of Switzerland (ie, Chapter 12 of the Federal Statute on Private International Law) does not contain any provisions regarding third-party participation in arbitration.

By contrast, the domestic arbitration law provides that the intervention and the joinder of a third party require an arbitration agreement between the third party and the parties to the dispute, and that they are subject to the consent of the arbitral tribunal (article 376(3) of the Civil Procedure Code).

Under article 6(4) of the Swiss Rules of International Arbitration, the arbitral tribunal shall decide on a request to join one or more third parties after consulting with all the parties, including the third parties, taking into account all relevant circumstances of the case.

Law stated - 23 January 2025

Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the ‘group of companies’ doctrine?

To date, the Swiss Federal Supreme Court has neither expressly rejected nor endorsed the group of companies doctrine. Whether or not the doctrine is recognised under Swiss law is thus a matter of scholarly debate. However, given that Swiss law is based on the concept that different legal entities form independent legal subjects, the mere existence of a group of companies is insufficient to extend the arbitration agreement to other companies within the same group. Rather, such extension would be allowed only in specific and exceptional circumstances.

In any event, when trying to apply the group of companies’ doctrine to extend the scope of an arbitration agreement to non-signatory third parties, it is worth noting that there might be

an overlap with the doctrine of implied intent to be bound by the arbitration agreement. This holds true, in particular, with respect to cases concerning the involvement of a non-signatory in the conclusion or performance of a contract.

Law stated - 23 January 2025

Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

Swiss law recognises multiparty arbitration agreements. Pursuant to the revised article 179(5) of the Federal Statute on Private International Law, which entered into force on 1 January 2021, in the case of a multiparty arbitration and in the absence of an agreement by the parties, the court at the seat of the arbitration may appoint all members of the arbitral tribunal (see also article 362(2) of the Civil Procedure Code). Other than that, no specific provisions of the Federal Statute on Private International Law deal with such situations.

Law stated - 23 January 2025

Consolidation

Can an arbitral tribunal in your jurisdiction consolidate separate arbitral proceedings? In which circumstances?

Chapter 12 of the Federal Statute on Private International Law contains no rules on the consolidation of arbitration proceedings by an arbitral tribunal. Potentially applicable institutional rules may, however, contain provisions to this effect. For example, article 7(1) of the Swiss Rules of International Arbitration provides that the Court of the Swiss Arbitration Centre may – upon the request of a party and after consulting with all parties and any confirmed arbitrator – consolidate arbitration proceedings pending under these rules.

Law stated - 23 January 2025

CONSTITUTION OF ARBITRAL TRIBUNAL

Eligibility of arbitrators

Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

Arbitrators must be impartial and independent of the parties (article 180(1)(c) of the Federal Statute on Private International Law). Beyond this, Chapter 12 of the Federal Statute on Private International Law imposes no additional requirements or restrictions on arbitrators. However, the parties are free to agree on any qualifications that the arbitrators must have (eg, regarding their legal qualification, experience of the subject matter or language skills) (article 179(1) of the Federal Statute on Private International Law). The parties are also free to choose the number of arbitrators.

While diversity is actively promoted in the Swiss arbitration community, the parties' autonomy to designate the arbitral tribunal is not limited by any non-discrimination laws.

Law stated - 23 January 2025

Background of arbitrators

Who regularly sit as arbitrators in your jurisdiction?

In Switzerland, parties most frequently designate practising attorneys and sometimes law professors.

Moreover, there is a tendency to provide for more (gender) diversity in institutional appointments. In 2016, the Swiss Chambers' Arbitration Institution (known today as the Swiss Arbitration Centre) signed the Equal Representation in Arbitration Pledge, which is committed to improving the representation of women in arbitration. In 2023, 50 per cent of the arbitrators appointed by the Court of the Swiss Arbitration Centre were male and 50 per cent were female.

Law stated - 23 January 2025

Default appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

In the absence of an agreement or if the appointment or replacement of the arbitrators is impossible for other reasons, the parties may turn to the court of the place where the tribunal has its seat. Where a state court is called on to appoint an arbitrator, it shall make the appointment (see article 179(2)-(3) of the Federal Statute on Private International Law).

Under the Swiss Rules of International Arbitration, if the parties have not agreed on the number of arbitrators, the Court of the Swiss Arbitration Centre decides whether the case shall be referred to a sole arbitrator or to a three-member tribunal (article 9(1) of the Swiss Rules of International Arbitration). If a party fails to designate an arbitrator, the Court of the Swiss Arbitration Centre will step in and appoint the arbitrator.

Law stated - 23 January 2025

Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

An arbitrator may be challenged if he or she does not have the qualifications agreed on by the parties, if the rules of arbitration agreed on by the parties provide a ground for challenge,

or if there are justifiable doubts as to his or her independence or impartiality (see article 180(1)(a)-(c) of the Federal Statute on Private International Law).

A party may not challenge an arbitrator whom it nominated itself unless the challenge is based on grounds that came to its attention after the appointment (article 180(2) of the Federal Statute on Private International Law).

The parties to the arbitration agreement can establish their own rules regarding the procedure for challenging the appointment of an arbitrator. Unless they agree otherwise and if the arbitration has not yet been concluded, article 180a of the revised Federal Statute on Private International Law provides that the request for challenge must be submitted in writing and with reasons to the challenged member of the arbitral tribunal within 30 days of the date the requesting party became aware or could have become aware in the exercise of reasonable diligence of the ground for challenge, and must be communicated to the other members of the arbitral tribunal within the same time limit. The requesting party may, within 30 days of filing the request for challenge with the arbitral tribunal, submit the challenge to the state court. The decision of the state court is final.

In addition, if a member of the arbitral tribunal is unable to perform his or her duties within a reasonable time or with due diligence, and unless the parties have agreed otherwise, a party may request the state court in writing and with reasons to remove him or her. The decision of the state court is final (article 180(b)(2) of the revised Federal Statute on Private International Law).

The replacement of an arbitrator might become necessary if a challenge to the appointment of the arbitrator succeeds. In addition, a replacement might become necessary if an arbitrator is dismissed as a result of the corresponding declarations of the parties to the arbitration proceedings, or if an arbitrator resigns or is removed at the request of one of the parties.

According to article 179(1) of the Federal Statute on Private International Law, an arbitrator shall be replaced in accordance with the agreement of the parties. In the absence of such agreement, the court of the place where the tribunal has its seat may be seized with the question (article 179(2) of the Federal Statute on Private International Law).

Arbitrators in Switzerland have a tendency to seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration to avoid a challenge or replacement.

Law stated - 23 January 2025

Relationship between parties and arbitrators

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration and expenses of arbitrators.

Under Swiss law, the parties and the arbitral tribunal are bound by an arbitral contract. By virtue of this contract, the arbitrators have to adjudicate the parties' dispute in person, with due care, independently and impartially. In turn, the arbitrators are entitled to compensation.

Law stated - 23 January 2025

Duties of arbitrators

What are arbitrators' duties of disclosure regarding impartiality and independence throughout the arbitral proceedings?

Under Swiss law, an arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his or her independence or impartiality (article 180(1)(c) of the Federal Statute on International Private Law). The same standard of independence and impartiality applies to all members of the arbitral tribunal, including party-appointed (co-)arbitrators; therefore, an arbitrator must disclose any circumstances that might raise reasonable doubts regarding his or her independence and impartiality. This duty applies throughout the entire arbitral proceedings.

Although the IBA Guidelines on Conflict of Interest in International Arbitration have no statutory nature, the Swiss Federal Supreme Court held that they may serve as a valuable instrument to determine the independence and impartiality of arbitrators.

The Swiss Rules of International Arbitration also state, in article 12, that any arbitrator conducting an arbitration under the Rules shall remain impartial and independent of the parties at all times and that arbitrators shall disclose any circumstances that are likely to give rise to justifiable doubts as to their impartiality or independence throughout the proceedings.

Law stated - 23 January 2025

Immunity of arbitrators from liability

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

The prevailing view is that the relationship between the parties to the arbitration proceedings and the arbitrators is contractual in nature. As a consequence, the question of an arbitrator's liability towards the parties will most likely be governed by Swiss law. Under Swiss law, a party is liable for a violation of its contractual duties; therefore, an arbitrator could become liable for a violation of his or her obligations. However, except for wilful intent and gross negligence, liability may be excluded or limited under Swiss law (as is the case under some institutional rules; see article 45 of the Swiss Rules of International Arbitration).

Law stated - 23 January 2025

JURISDICTION AND COMPETENCE OF ARBITRAL TRIBUNAL

Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

The state courts will decline jurisdiction whenever there is a valid arbitration agreement between the parties, unless the parties proceed on the merits without reservation (article 7 of the Federal Statute on Private International Law and article II(3) of the New York Convention

on the Recognition and Enforcement of Foreign Arbitral Awards). A plea of lack of jurisdiction must be raised prior to any defence on the merits (article 186(2) of the Federal Statute on Private International Law).

Law stated - 23 January 2025

Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated, and what time limits exist for jurisdictional objections?

Pursuant to article 186(1) of the Federal Statute on Private International Law, the arbitral tribunal is competent to decide on its own jurisdiction (the ***Kompetenz-Kompetenz*** principle). This applies even if an action on the same matter between the same parties is pending before a state court or another tribunal, unless there are compelling reasons to stay the proceedings (article 186(1bis) of the Federal Statute on Private International Law). A plea of lack of jurisdiction must be raised prior to any defence on the merits (article 186(2) of the Federal Statute on Private International Law). The tribunal shall generally decide on its jurisdiction by preliminary award (article 186(3) of the Federal Statute on Private International Law).

Law stated - 23 January 2025

Distinction between admissibility and jurisdiction of tribunal

Is there a distinction between challenges as to the admissibility of a claim and as to the jurisdiction of the tribunal?

The admissibility of a claim may pertain to various aspects and may include questions of jurisdiction, the absence of res judicata or the admissibility of the relief that is sought, to name a few.

Under Swiss ***lex arbitri***, inadmissibility itself is not a ground for challenge. In contrast, the jurisdiction of the tribunal, or lack thereof, is one of the few grounds that can be raised in setting-aside proceedings. Other aspects of admissibility may therefore constitute a ground for challenge of the award only where they can be subsumed under one of the other grounds for challenge. For example, an award that is rendered in violation of res judicata is considered to violate public policy.

The question of admissibility and jurisdiction often comes up in connection with multi-tiered dispute resolution clauses where the parties agreed on mediation, negotiation or another means of alternative dispute resolution before proceeding to arbitration. In Switzerland, the question of whether the parties have complied with this mechanism and whether the tribunal may therefore adjudicate the dispute is ultimately treated as an issue of jurisdiction; however, this does not mean that every award will be set aside where it was rendered despite the parties not having followed the exact protocol of the multi-tiered dispute resolution clause.

Law stated - 23 January 2025

ARBITRAL PROCEEDINGS

Place and language of arbitration, and choice of law

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings? How is the substantive law of the dispute determined?

Unless the parties have agreed otherwise, the seat will be determined by the arbitral institution designated by them or, in the absence of such designation, by the arbitrators (article 176(3) of the Federal Statute on Private International Law). The language will be chosen by the tribunal if the parties failed to make a choice in this regard (article 182(2) of the Federal Statute on Private International Law).

The parties are free to choose the rules of law applicable to their conflict. According to article 187(1) of the Federal Statute on Private International Law, a dispute is decided according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection. The parties can also authorise the tribunal to decide ***ex aequo et bono*** (article 187(2) of the Federal Statute on Private International Law).

Law stated - 23 January 2025

Commencement of arbitration

How are arbitral proceedings initiated?

Under Swiss arbitration law, arbitration proceedings are considered to be pending as soon as one of the parties seizes the arbitrators designated in the arbitration agreement with a claim. If no arbitrators are designated in the arbitration agreement, the proceedings are considered to be pending from the moment that one of the parties initiates the procedure for the appointment of the tribunal (article 181 of the Federal Statute on Private International Law and article 372(1) of the Civil Procedure Code).

Under the Swiss Rules of International Arbitration, arbitration proceedings are commenced by filing a notice of arbitration with the secretariat of the Swiss Arbitration Centre. Article 3(3) of the Rules sets out the minimum content of the notice.

Law stated - 23 January 2025

Hearing

Is a hearing required and what rules apply?

The Swiss Federal Supreme Court has decided that the right to be heard does not encompass the right to be heard orally (BGE 142 III 360 E 4.1.1). There is therefore no requirement to hold a hearing under Swiss arbitration law. The Swiss Rules of International Arbitration govern hearings in their article 27.

Law stated - 23 January 2025

Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

The procedure for the taking of evidence is a matter for determination by the parties or, in the absence of any agreement, by the tribunal (article 182 of the Federal Statute on Private International Law). Under Chapter 12 of the Federal Statute on Private International Law, a tribunal is not obliged to follow the rules of state courts regarding the taking of evidence.

Chapter 12 of the Federal Statute on Private International Law contains no provisions on the kinds of evidence that are admissable. However, a tribunal acting under Chapter 12 will usually stick to the commonly known evidentiary means, such as documents, fact and expert witnesses, and site inspections.

Under article 184(1) of the Federal Statute on Private International Law, the tribunal shall conduct the taking of evidence (ie, the parties and the arbitrators cannot delegate the taking of evidence to a third party such as a state authority).

Law stated - 23 January 2025

Court involvement

In what instances can the arbitral tribunal request assistance from a court, and in what instances may courts intervene?

A tribunal acting under Chapter 12 of the Federal Statute on Private International Law has no coercive powers; therefore, article 184(2) of the Federal Statute on Private International Law provides that if the assistance of state judiciary authorities is necessary for the taking of evidence, the arbitral tribunal or a party with the consent of the arbitral tribunal may request the assistance of the state court judge at the seat of the arbitral tribunal; the judge shall apply his or her own law. Upon request, it may apply or consider other procedural rules (see revised article 184(2) and (3) of the Federal Statute on Private International Law, which entered into force on 1 January 2021).

Further, in the case of non-compliance with any interim measures ordered, the tribunal lacks the power to enforce its interim decision; therefore, if a party does not voluntarily comply with any interim measures ordered against it, the tribunal may request the assistance of the state court judge (article 183(2) of the Federal Statute on Private International Law).

Article 185 of the Federal Statute on Private International Law provides that the court at the place of the seat of the tribunal has jurisdiction for any further judicial assistance. Such interventions of a Swiss court hardly ever occur in practice.

Law stated - 23 January 2025

Confidentiality

Is confidentiality ensured?

Chapter 12 of the Federal Statute on Private International Law contains no rules on confidentiality. By contrast, article 44(1) of the Swiss Rules of International Arbitration provides that, unless the parties expressly agree in writing to the contrary, the parties undertake to keep confidential all awards and orders as well as all materials submitted by another party in the framework of the arbitral proceedings not already in the public domain, except and to the extent that a disclosure may be required of a party by a legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a judicial authority. This undertaking also applies to the arbitrators, the tribunal-appointed experts and the secretary of the tribunal.

According to article 44(2) of the Swiss Rules of International Arbitration, the deliberations of the tribunal are confidential.

Law stated - 23 January 2025

INTERIM MEASURES AND SANCTIONING POWERS

Interim measures by the courts

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

An arbitration agreement does not preclude a Swiss state court from granting any interim relief before or after the commencement of arbitration proceedings.

Law stated - 23 January 2025

Interim measures by an emergency arbitrator

Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

Swiss arbitration law does not provide for an emergency arbitrator prior to the constitution of the arbitral tribunal. By contrast, the Swiss Rules of International Arbitration have adopted the possibility to seek emergency relief from an emergency arbitrator. A party requiring urgent interim measures before the arbitral tribunal is constituted may, unless otherwise agreed by the parties, submit to the secretariat of the Swiss Arbitration Centre an application for emergency relief proceedings (article 43 of the Swiss Rules of International Arbitration).

Law stated - 23 January 2025

Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

Article 183(1) of the Federal Statute on Private International Law (for international arbitrations) and article 374 of the Civil Procedure Code (for domestic arbitrations) do not

define the permitted content or types of interim measures. However, it is commonly accepted that, in principle, a tribunal can grant any interim measures it considers necessary to protect a party's right effectively during the arbitration proceedings. In other words, a tribunal to which Chapter 12 of the Federal Statute on Private International Law applies is not restricted to interim measures recognised under Swiss law.

According to the prevailing view, Swiss law does not per se exclude the possibility of ex parte interim measures by an arbitral tribunal, though such measures are rare in practice.

Notably, the parties may exclude or limit the arbitral tribunal's power to issue interim measures.

An arbitral tribunal also has the authority to grant security for costs, but this is not done frequently.

Law stated - 23 January 2025

Sanctioning powers of the arbitral tribunal

Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration? May counsel be subject to sanctions by the arbitral tribunal or domestic arbitral institutions?

The issue of guerrilla tactics is not explicitly dealt with in Swiss arbitration law nor in the Swiss Rules of International Arbitration. An arbitral tribunal may, however, sanction bad faith conduct of the parties when allocating costs (see article 40 of the Swiss Rules of International Arbitration).

The question of whether an arbitral tribunal may sanction counsel is not the subject of active debate in Switzerland.

Law stated - 23 January 2025

AWARDS

Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

The parties are free to establish their own rules on how the tribunal should reach its decision (article 189(1) of the Federal Statute on Private International Law). If they fail to do so, the default rule of article 189(2) of the Federal Statute on Private International Law provides that the arbitral award shall be made by a majority or, in the absence of a majority, by the presiding arbitrator alone.

Law stated - 23 January 2025

Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

Chapter 12 of the Federal Statute on Private International Law does not address whether dissenting opinions are permitted. However, according to the Swiss Federal Supreme Court, a dissenting opinion may be expressed if the parties agreed to allow dissenting opinions, or if the majority of the tribunal decides to allow a dissenting opinion.

Law stated - 23 January 2025

Form and content requirements

What form and content requirements exist for an award?

Any award rendered by an international arbitral tribunal in Switzerland is final from its notification (article 190(1) of the Federal Statute on Private International Law). The term 'final' means both that the award is enforceable and that it has binding effect by operation of law; therefore, no additional state court scrutiny is needed for an award rendered by an international tribunal seated in Switzerland to be enforceable and have binding effect.

According to article 189(1) of the Federal Statute on Private International Law, the arbitral award shall be rendered in conformity with the procedure and in the form agreed on by the parties.

In the absence of such agreement, the arbitral award shall be made by a majority or, in the absence of a majority, by the chair. The award shall further be in writing, supported by reasons, dated and signed. The signature of the chair is sufficient (article 189(2) of the Federal Statute on Private International Law).

Pursuant to recent case law by the Swiss Federal Supreme Court, an award need not contain any legal reasoning or factual findings, if the parties agree to procedural rules that do not provide for these elements. While such an award may be de facto unreviewable in setting-aside or enforcement proceedings, the Federal Supreme Court is of the view that this consequence is accepted by the parties when agreeing on such procedural rules.

Law stated - 23 January 2025

Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

Swiss law imposes no time limit on the arbitrators within which they must render their award.

The Swiss Rules of International Arbitration do not impose a time limit on the arbitrators to render the final award either, except for arbitral proceedings conducted under the Expedited Procedure provisions (due to party agreement or if the total amount in dispute does not exceed 1 million Swiss francs and the court does not decide otherwise; article 42(1) of the Swiss Rules of International Arbitration). According to article 2 of the Guidelines for

Arbitrators of the Swiss Arbitration Centre, the Swiss Arbitration Centre expects the arbitral tribunal to render its final award within three months of the filing of the last submission on the merits in the proceedings. Further, the tribunal is expected to inform the secretariat within 10 days of the last submission on the merits of the date by which it expects to render its final award.

For an Expedited Procedure (which constituted 45 per cent of cases administered by the Swiss Arbitration Centre in 2023), the award must be rendered within six months of the date on which the tribunal received the file from the secretariat, except in the case of exceptional circumstances (article 42(1)(e) of the Swiss Rules of International Arbitration).

Law stated - 23 January 2025

Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

To set aside a final award in Switzerland, the date of notification of the respective award (as opposed to the date of the award itself) is decisive (article 100(1) of the Federal Statute on the Swiss Federal Supreme Court). This is also codified in the revised article 190(4) of the Federal Statute on Private International Law, which entered into force on 1 January 2021. The same applies with regard to preliminary awards (article 190(3) of the Federal Statute on Private International Law). The mode of notification is determined by the parties' explicit agreement or their choice of institutional rules. In the absence of such agreement or choice, the electronic receipt of the award may constitute sufficient notification.

Pursuant to the revised article 189(a)(1) of the Federal Statute on Private International Law, which entered into force on 1 January 2021, unless otherwise agreed by the parties, every party may file an application to the arbitral tribunal, within 30 days of notification of the award, for the correction and interpretation of the award. Within the same time frame, the arbitral tribunal, on its own initiative, may correct, interpret or complete the award.

Regarding the interpretation or correction of an award, or the request of an additional award, the Swiss Rules of International Arbitration consider the date of receipt of the award as decisive (article 37 of the Swiss Rules of International Arbitration).

Law stated - 23 January 2025

Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

Besides a final award, arbitral tribunals may render preliminary awards and, unless agreed otherwise by the parties, partial awards (articles 190(3) and 188 of the Federal Statute on Private International Law). The Federal Statute on Private International Law is silent on the issue of how arbitral tribunals should proceed if the parties settle their dispute amicably. Subject to the parties' agreement or choice of institutional rules, arbitral tribunals may issue either a consent award or a termination order (both explicitly provided for in article 36 of the

Swiss Rules of International Arbitration 2021). Unless agreed otherwise by the parties, the arbitral tribunal may, on the motion of one party, order provisional or conservatory measures (article 183(1) of the Federal Statute on Private International Law and article 374(1) of the Civil Procedure Code).

Law stated - 23 January 2025

Termination of proceedings

By what other means than an award can proceedings be terminated?

Under the Swiss Rules of International Arbitration, arbitral proceedings can also be terminated by means of a consent award or a termination order (as opposed to a final award), such as if the parties reach a settlement agreement or a party withdraws its claims without prejudice.

If a consent award is requested by the parties and accepted by the arbitral tribunal, the arbitral tribunal shall record the settlement in the form of an arbitral award on agreed terms (article 36(1) of the Swiss Rules of International Arbitration).

If the continuation of the arbitral proceedings becomes unnecessary or impossible for reasons other than a settlement, the arbitral tribunal shall give advance notice to the parties that it may terminate the proceedings. Unless a party raises justifiable grounds for objection, the arbitral tribunal then has the power to issue such an order (article 36(2) of the Swiss Rules of International Arbitration).

Law stated - 23 January 2025

Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

Chapter 12 of the Federal Statute on Private International Law contains no rules on the costs of arbitration proceedings, including their estimation and allocation.

In contrast, the Swiss Rules of International Arbitration contain detailed provisions on costs (article 38 et seq of the Swiss Rules of International Arbitration). They provide, in particular, that the following costs are recoverable:

- fees of the arbitral tribunal;
- expenses incurred by the tribunal and secretary, if any;
- costs of expert advice;
- expenses incurred by witnesses to the extent approved by the tribunal;
- reasonable costs for legal representation;
- registration fee and administrative costs; and
- fees and expenses incurred in emergency arbitration proceedings.

The costs of the arbitration shall, in principle, be borne by the unsuccessful party. The tribunal may apportion any of the costs of the arbitration among the parties if it determines that such apportionment is reasonable, taking into account the circumstances of the case, including the parties' contributions to the efficient conduct of the proceedings and the avoidance of unnecessary costs and delays (article 40 of the Swiss Rules of International Arbitration).

Law stated - 23 January 2025

Interest
May interest be awarded for principal claims and for costs, and at what rate?

The answer to this question depends on the applicable substantive law. Swiss substantive law allows for the award of interest. Under the Code of Obligations, where an obligation involves the payment of interest but the rate is not set by contract, law or custom, interest is payable at the rate of 5 per cent per annum (article 73(1) of the Code of Obligations).

Law stated - 23 January 2025

PROCEEDINGS SUBSEQUENT TO ISSUANCE OF AWARD

Interpretation and correction of awards
Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

Pursuant to the revised article 189(a)(1) of the Federal Statute on Private International Law, which entered into force on 1 January 2021, unless otherwise agreed by the parties, any party may file an application to the arbitral tribunal, within 30 days of notification of the award, for the correction and interpretation of the award. Within the same time frame, the arbitral tribunal, on its own initiative, may correct, interpret or complete the award. According to recent case law of the Swiss Federal Supreme Court, an arbitral tribunal that renders a significantly expanded supplementary award upon a request for clarification by one party without notifying the counterparty violates the latter's right to be heard and the principle of equal treatment.

The rules for domestic arbitration (ie, Part 3 of the Civil Procedure Code) also provide for the possibility of a correction or interpretation of an award (article 388(1)(a) and (b) of the Civil Procedure Code). The application must be made to the arbitral tribunal within 30 days of the discovery of the error or the parts of the award that need to be explained or amended, but no later than one year from receiving notice of the award (article 388(2) of the Civil Procedure Code).

Pursuant to the Swiss Rules of International Arbitration, within 30 days of the receipt of the award, a party, with notice to the secretariat and to the other parties, may request the arbitral tribunal to give an interpretation of the award or to correct in the award any errors in computation, any clerical or typographical errors, or any errors of a similar nature, or make an additional award as to claims presented in the proceedings but omitted from the award (article 37(1) of the Swiss Rules of International Arbitration).

Challenge of awards

How and on what grounds can awards be challenged and set aside?

The rules on international arbitration allow the parties to challenge an arbitral award within 30 days of communication of the award by way of annulment proceedings, based on one of the grounds exhaustively listed in article 190(2) of the Federal Statute on Private International Law as follows:

- the tribunal was irregularly constituted or the sole arbitrator was improperly appointed;
- the tribunal wrongly accepted or declined jurisdiction;
- the tribunal's decision went beyond the claims submitted to it or failed to address one of the items of the claim;
- the principle of equal treatment of the parties or the right of the parties to be heard was violated; or
- the award is incompatible with public policy.

According to article 190(3) of the Federal Statute on Private International Law, interim (or preliminary) awards (as opposed to final awards) may be challenged only on the basis of a violation of article 190(2)(a) of the Federal Statute on Private International Law (irregular constitution of the tribunal) or article 190(2)(b) of the Federal Statute on Private International Law (incorrect ruling on jurisdiction).

All challenges of international arbitral awards rendered in Switzerland are heard directly by the Swiss Federal Supreme Court. If the Federal Supreme Court decides that one of the grounds listed in article 190(2) of the Federal Statute on Private International Law is fulfilled, it will set aside the award. The Federal Supreme Court will generally not issue its own decision replacing the award and will instead refer the matter back to the same tribunal for reconsideration. An exception is where it decides on the constitution of the tribunal or the jurisdiction of the tribunal.

Case law has shown that the Swiss Federal Supreme Court is reluctant to set aside arbitral awards, and the success rate of appeals brought before the Swiss Federal Supreme Court is notably low: less than 10 per cent of challenges are successful.

If the time limit for filing a challenge has elapsed, the revised article 190a of the Federal Statute on Private International Law, which entered into force on 1 January 2021, allows a party to file a request for revision before the Swiss Federal Supreme Court, which may also lead to the setting aside of an arbitral award. A revision will be granted only in exceptional and highly limited circumstances, such as where:

- a party discovers crucial new facts or evidence that had already existed at the time of the award but was only discovered after the award was rendered despite due diligence (article 190(1)(a));
- the award was criminally obtained (article 190a(1)(b)); or
-

a ground for challenge of an arbitrator only came to light after the award was rendered despite due diligence (article 190a(1)(c)).

The request for revision must be filed within 90 days of the discovery of the ground for revision and may not be requested more than 10 years after the award came into force, except in the case of article 190a(1)(b) (article 190a(2) of the Federal Statute on Private International Law).

Since the revision of Chapter 12 of the Federal Statute on Private International Law, which entered into force on 1 January 2021, parties may submit an application to challenge an award or for revision not only in an official Swiss language (ie, German, French or Italian) but also in English (article 191 of the revised Federal Statute on Private International Law, referring to articles 119a and 77(2bis) of the revised Federal Statute on the Swiss Federal Supreme Court).

Law stated - 23 January 2025

Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

Under Swiss law, an arbitral award stemming from an international arbitration may be challenged only before the Swiss Federal Supreme Court (article 191 of the Federal Statute on Private International Law). The proceedings are governed by the Federal Statute on the Swiss Federal Supreme Court. Appeals against arbitral awards may be brought before the Swiss Federal Supreme Court under the uniform appeal in civil matters (article 77(1) of the Federal Statute on the Swiss Federal Supreme Court). Setting-aside proceedings before the Swiss Federal Supreme Court last approximately six months on average.

The court costs of a setting-aside proceeding depend on the amount in dispute, the scope and the difficulty of the case, and are limited to a maximum of 200,000 Swiss francs. The petitioner must pay an advance on costs. If the petitioner does not have a permanent residence in Switzerland, it may also be obliged, at the request of the other party, to pay a security for party costs. As a rule, the losing party will be obliged to reimburse the winning party for its necessary costs for legal representation.

For domestic arbitration proceedings, the parties may agree that the award shall instead be reviewed by the cantonal court in the canton where the arbitral tribunal is seated; this review is exclusive, meaning that the resulting decision cannot be appealed to the Swiss Federal Supreme Court (articles 390 and 356 of the Civil Procedure Code). In practice, parties rarely elect for a review by a cantonal court.

Law stated - 23 January 2025

Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

Any award rendered by an international arbitral tribunal in Switzerland is final from its notification (article 190(1) of the Federal Statute on Private International Law). The term 'final' means both that the award is enforceable and that it has binding effect by operation of law; therefore, no additional state court scrutiny is needed for an award rendered by an international tribunal with a seat in Switzerland to be enforceable and have binding effect.

The recognition and enforcement of a foreign arbitral award are governed by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). This also applies to awards rendered in a non-member state of the New York Convention (article 194 of the Federal Statute on Private International Law, ***erga omnes*** effect).

Law stated - 23 January 2025

Time limits for enforcement of arbitral awards

Is there a limitation period for the enforcement of arbitral awards?

Swiss arbitration law does not provide for a limitation period with regard to the enforcement of awards, as, from a Swiss law perspective, limitation periods are issues of substantive law.

Law stated - 23 January 2025

Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

The recognition and enforcement of a foreign arbitral award are governed by the New York Convention. According to article V(1)(e) of the New York Convention, recognition and enforcement can be refused if the award has been set aside by a competent authority of the country of which, or under the law of which, that award was made.

Law stated - 23 January 2025

Enforcement of orders by emergency arbitrators

Does your domestic arbitration legislation, case law or the rules of domestic arbitration institutions provide for the enforcement of orders by emergency arbitrators?

According to article 43(8) of the Swiss Rules of International Arbitration, decisions of emergency arbitrators shall have the same effects as interim measures. According to article 183(2) of the Federal Statute on Private International Law, an arbitral tribunal or a party may request the assistance of the state court judge if a party does not voluntarily comply with any interim measures ordered against it.

Law stated - 23 January 2025

Cost of enforcement

What costs are incurred in enforcing awards?

The enforcement proceedings of monetary awards are governed by the statutory tariffs on debt enforcement and bankruptcy. The fees for the proceedings in which the award is enforced depend on the value of the amount at stake.

Court fees for the enforcement of non-monetary awards are dealt with in the cantonal court fee ordinances and may vary within Switzerland from canton to canton.

Law stated - 23 January 2025

OTHER

Influence of legal traditions on arbitrators

What dominant features of your judicial system might exert an influence on an arbitrator from your jurisdiction?

Given that Switzerland is a civil law jurisdiction, the Civil Procedure Code does not provide for a discovery phase. Swiss arbitrators will usually be reluctant to allow US-style discovery and will rather request the production of specific documents that seem relevant and material to the outcome of the case. Written witness statements, on the other hand, are very familiar to Swiss arbitrators.

Law stated - 23 January 2025

Professional or ethical rules

Are specific professional or ethical rules applicable to counsel and arbitrators in international arbitration in your jurisdiction? Does best practice in your jurisdiction reflect (or contradict) the IBA Guidelines on Party Representation in International Arbitration?

Counsel and arbitrators who are admitted to the bar in Switzerland and who appear in an international arbitration are, in principle, subject to the Swiss rules on professional and ethical conduct. These rules are significantly less detailed than the IBA Guidelines on Party Representation in International Arbitration.

Law stated - 23 January 2025

Third-party funding

Is third-party funding of arbitral claims in your jurisdiction subject to regulatory restrictions?

There are no regulatory restrictions on third-party funders, though funding arrangements must comply with professional and ethical rules – in particular, those relating to counsels' independence and the prohibition on conflicts of interest.

Law stated - 23 January 2025

Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

Switzerland, being an arbitration-friendly jurisdiction, does not present any adverse particularities of which one should be aware.

Law stated - 23 January 2025

UPDATE AND TRENDS

Legislative reform and investment treaty arbitration

Are there any emerging trends or hot topics in arbitration in your country? Is the arbitration law of your jurisdiction currently the subject of legislative reform? Are the rules of the domestic arbitration institutions mentioned above currently being revised? Have any bilateral investment treaties recently been terminated? If so, which ones? Is there any intention to terminate any of these bilateral investment treaties? If so, which ones? What are the main recent decisions in the field of international investment arbitration to which your country was a party? Are there any pending investment arbitration cases in which the country you are reporting about is a party?

The Swiss Arbitration Centre recently issued the Supplemental Swiss Rules for Corporate Law Disputes, in force as of 1 January 2023. The Supplemental Rules are tailored specifically to corporate law disputes based on arbitration clauses contained in articles of associations.

Further, a revision of the Civil Procedure Code entered into force on 1 January 2025. The revision provides for several minor changes in Part 3 of the Code that apply to domestic arbitration (eg, the amendments of articles 370(1) regarding the removal of arbitrators and 374(2) regarding interim measures, and the deletion of article 372(2) regarding the pendency of arbitration proceedings). The revision is relevant to international arbitration in that it permits cantonal law, under certain conditions, to provide for the use of the English language in summary proceedings in which a Swiss state court acts as ***juge d'appui*** (article 251a(2) of the revised Code of Civil Procedure).

A bilateral investment treaty between Switzerland and the Kingdom of Saudi Arabia (the Agreement on the Encouragement and Reciprocal Protection of Investments, signed on 1 April 2006) will expire on 8 August 2025, as agreed between the two governments in 2023. Negotiations for an updated treaty are under way.

Law stated - 23 January 2025