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Swiss International Arbitration Law
The 2021 Reform in Context

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The Swiss international arbitration law — Chapter 12 of the Swiss Private International Law Act ('PILA') — was originally adopted in 1987, almost at the same time as the UNCITRAL Model Law on International Commercial Arbitration (1985). More than three decades later, on 1 January 2021, a thorough reform of Chapter 12 PILA entered into force with the following main objectives: (i) codify decades of Swiss arbitration case law, (ii) make Chapter 12 (even more) user-friendly, and (iii) further strengthen party autonomy. This article introduces the recent key amendments to Chapter 12 and makes, where relevant, a brief comparison with the approaches taken by the UNCITRAL Model Law to provide background to a wider international audience.

Introduction

Swiss international arbitration law is codified as Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (the 'PILA'). While Chapter 12 PILA regulates by and large the same issues as the UNCITRAL Model Law 1985 (the 'Model Law'),[1] it is nevertheless an independent and unique version of an arbitration law.[2] With the exception of minor amendments, Chapter 12 PILA remained untouched for more than three decades. It has served the arbitration community well.

Given its overall success, the need for a reform of Chapter 12 PILA was not obvious. Still, the Swiss stakeholders did not want to rest on their laurels and, in 2012, the Swiss parliament requested the Swiss government to prepare a reform bill that 'preserves the attractiveness of Switzerland as an international arbitration hub'.[3] An in-depth market and regulatory cost assessment study was commissioned and presented in 2017.[4] A first draft of a reform bill was published in the same year and, following public consultations, a revised draft bill was released in 2018. The latter identified three main objectives: (i) codify the case law of the highest Swiss court, i.e. the Swiss Federal Court (the 'SFC', the *Bundesgericht* or *Tribunal fédéral*); (ii) clarify Chapter 12 PILA for user-friendly purposes; and (iii) further strengthen party autonomy in line with international developments, such as accepting the validity of unilateral arbitration clauses (e.g. in wills or trust instruments), and the validity of arbitration agreements that do not stipulate a seat. The reform, in line with these objectives, was adopted on 9 June 2020[5] and entered into force on 1 January 2021.[6]

1 UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006.

2 On the history and key characteristics of Chapter 12, see e.g. B. Berger, F. Kellerhals, *International and Domestic Arbitration in Switzerland* (4th ed., Stämpfli, 2021) at N. 85–93.

3 Motion 12.3012, 3 Feb. 2012, Schweizer Nationalrat.

4 F. Theus Simoni, A. Lang, N. Conrad, S. Fuchs 'Internationale Schiedsgerichtsbarkeit in der Schweiz. Eine Markt- und Regulierungskostenanalyse', Zürcher Hochschule für Angewandte Wissenschaften School of Management and Law, 7 Sep. 2017.

5 On the reform process, by one of its most influential commentators, see P. Habegger, 'Das Parlament verabschiedet die Revision von Kapitel 12 IPRG mit einem Feinschliff (2020) 38 No. 3 *ASA Bulletin*, 548; *id.*, 'Das revidierte Kapitel 12 IPRG über die Internationale Schiedsgerichtsbarkeit' (2021) 53 *Schweizerische Zeitschrift für Zivilprozess- und Zwangsvollstreckungsrecht*, 371.

6 On the entry into force, including intertemporal issues, see R.A. Tettamanti, 'Intertemporales Schiedsrecht. Die für die Revision des 12. Kapitels IPRG relevanten Übergangsbestimmungen' (2020) 38 No. 4 *ASA Bulletin*, 821.

Swiss international arbitration law had a different structure from the Model Law when it was first introduced. This is still the case following the 2021 reform, which retained the general architecture of Chapter 12 PILA.

1. Key over-arching principles in Swiss international arbitration law

The scope of application of the PILA

Swiss law distinguishes international and domestic arbitration. While the former is codified in Chapter 12 PILA, the latter is dealt with in Part 3 of the Swiss Code of Civil Procedure (the 'Swiss CCP'). When compared to Article 1(3) and (4) of the Model Law, the Swiss definition of 'international' in Article 176(1) PILA is much simpler:

> The provisions of this Chapter [12] shall apply to arbitrations with their seat in Switzerland if at least one of the parties to the arbitration agreement, at the time of its conclusion, did not have its domicile, habitual residence or seat in Switzerland.[7]

Under the old version of Article 176(1) PILA, which referred generally to 'one of the parties' rather than specifically to 'one of the parties to the arbitration agreement', the Swiss Federal Court considered Chapter 12 PILA to apply if one of the parties *to the arbitral proceedings* was domiciled outside of Switzerland at the time of the conclusion of the arbitration agreement. This confusion between the parties to the arbitration proceedings and to the arbitration agreement was subject to criticism by legal commentators.[8] The legislator has now clarified that what matters exclusively is the domicile of the parties *to the arbitration agreement* at the time of its conclusion, irrespective of the parties' subsequent move out of/into Switzerland. In the context of partnership, joint venture, or construction agreements involving multiple parties and only one of them being located outside of Switzerland, for example, the PILA now applies (i) to the arbitration agreement between the two parties domiciled in Switzerland and (ii) to this arbitration agreement even if the third party later moves to Switzerland. It also no longer matters which party to the arbitration agreement is ultimately a party to the proceedings.

Furthermore, pursuant to Article 176(2) PILA,[9] the parties may freely choose between the above-mentioned international and domestic arbitration regimes:

> The parties may, either in the arbitration agreement or in a subsequent agreement, exclude the application of this Chapter [12] and agree on the application of Part 3 of the [Swiss] CCP. The exclusion shall meet the conditions as to form set out in Article 178(1).

The reference to Article 178(1) PILA, at the end of this provision, was newly introduced in 2021 and the requirement is therefore for an agreement to be 'in writing or in any other manner that can be evidenced by text'. Under the old law, no particular form was prescribed for an agreement to opt out of Chapter 12 PILA,[10] but the parties' intentions had to be clearly expressed by the terms used.[11]

Since Swiss arbitration law only applies to arbitrations seated in Switzerland,[12] Article 176(3) PILA furthermore clarifies how to determine the seat:

> The seat of the arbitration shall be determined by the parties or by the arbitral institution designated by the parties, or, failing which, by the arbitral tribunal.

All other arbitrations, i.e. those with a seat abroad, are 'foreign' (see e.g. Art. 185a PILA). Swiss law thus distinguishes between Swiss domestic arbitration (governed by the CCP), Swiss international arbitration (governed by the PILA and the subject of this article), and foreign arbitration.

In practice, many parties seem to choose arbitration in Switzerland without, however, designating a seat *within* Switzerland (e.g. 'arbitration in Switzerland'). How to deal with these so-called 'arbitration in Switzerland' clauses was previously a matter of considerable

7 The verbatim quotes reproduced in this article are taken from a working translation of the PILA available at **https://www.swissarbitration.org/swiss-arbitration/swiss-arbitration-laws/**.

8 See e.g., with further references, D.C. Pfiffner, D. Hochstrasser in P. Grolimund et al., *Basler Kommentar Internationales Privatrecht* (4th ed., Helbing Lichtenhahn 2021) at Art. 176, N. 43.

9 The corresponding provision in the domestic arbitration regime is Art. 353(2) Swiss CCP.

10 Decision of the Swiss Federal Court ('DFC') 116 II 721, c. 4, available at **https://www.bger.ch/ext/eurospider/live/de/php/clir/http/index_atf.php?lang=de**.

11 DFC 115 II 390, c. 2.b)bb); C. Oetiker in M. Müller-Chen, C. Widmer Lüchinger, *Zürcher Kommentar zum IPRG* (3rd ed., Schulthess 2018) at Art. 176, N. 103, 105; A. Bucher in A. Bucher, *Commentaire romand. Loi sur le droit international privé* (Helbing Lichtenhahn 2011) at Art. 176, N. 30; M. Orelli in M. Arroyo, *Arbitration in Switzerland. The Practitioner's Guide* (2nd ed., Wolters Kluwer 2018) at PILS Art. 176, N. 29.

12 Pursuant to Art. 176(1) PILA and Art. 353(1) Swiss CCP.

uncertainty,[13] in particular if no mechanism had been agreed or third-party entity determined (e.g. an arbitral institution) to designate the seat in lieu of the parties. The 2021 reform now clarifies, in Article 179(2)(2) PILA, that if 'the parties have ... merely agreed that the seat of the arbitration shall be in Switzerland, the state court first seized shall have jurisdiction' with regard to appointing or replacing arbitrators, if need be.[14] It can be deduced from that provision that the lack of a precise seat does not, under Swiss law, render arbitration agreements overall null and void. The 'arbitration in Switzerland' clauses are in principle valid and a seat will be determined in accordance with the above-mentioned mechanisms.

A liberal concept of arbitrability under Swiss law

While the Model Law left the notion of arbitrability open, Swiss international arbitration law, in Article 177(1) PILA,[15] defines this concept. It follows a liberal approach.

Article 177(2) PILA[16] furthermore codifies the principle of good faith in this context and protects legitimate expectations of private parties where states and state entities are involved:

> Where a party to the arbitration agreement is a State, or an enterprise held by, or an organisation controlled by, a State, it may not invoke its own law in order to contest the arbitrability of a dispute or its capacity to be a party to an arbitration.

The notions 'enterprise held by' and 'organisation controlled by' a State are interpreted widely by the Swiss Federal Court.[17]

As with the scope of application, the concept of arbitrability remains untouched by the 2021 reform.

Implicit waiver of the right to object

Article 4 of the Model Law[18] requires, as many institutional arbitration rules,[19] that a party object 'without undue delay' to any procedural irregularity, lest this party be deemed to have waived its right to object.

Prior to the 2021 reform, Chapter 12 PILA did not contain a corresponding provision, although the Swiss Federal Court already required timely objections.[20] Article 182(4) PILA now codifies this case law:

> A party that proceeds with the arbitration without immediately raising an objection to a violation of procedural rules which it knew or, exercising due diligence, ought to have known, may not subsequently raise such objection.

As can be seen from its wording ('ought to have known'), this provision enacts an *objective* standard.[21] What counts is the point of view of a hypothetical and diligently acting third party.

The role of Swiss courts in arbitral matters

Article 5 of the Model Law highlights that state courts shall not intervene in arbitral matters 'except where so provided in this Law'. While Chapter 12 PILA does not contain such wording, the position under Swiss law is similar in substance.

In Switzerland, almost all judicial functions in support of arbitral proceedings are centralised in the courts at the seat.[22] More flexible is the state court jurisdiction relating to provisional and conservatory measures (Art. 183 PILA), allowing such measures to be taken also by the courts in places where such measures would need to be enforced. Newly introduced in 2021, Article 185a PILA now also expressly regulates the support of *foreign* arbitral proceedings by Swiss courts.

> (1) An arbitral tribunal sitting abroad or a party to a foreign arbitration may request the assistance of the state court at the place where

13 See with further references, D.C. Pfiffner, D. Hochstrasser, supra note 8, at Art. 176, N. 31; C. Oetiker, supra note 11, at Art. 176, N. 73–76; A. Bucher, supra note 11, at Art. 176, N. 15.

14 See also section 3 below 'The composition of the arbitral tribunal'.

15 'Any claim involving a financial interest may be the subject-matter of an arbitration.'

16 On the content and purpose of this provision, see in detail B. Berger, F. Kellerhals, supra note 2, at N. 369–388; M. Orelli, supra note 11, at PILS Art. 177, N. 3; C. Oetiker, supra note 11, at Art. 177, N. 87–89; D. Girsberger, N. Voser, *International Arbitration. Comparative and Swiss Perspectives* (4th ed., Schulthess 2021) at N. 451.

17 See e.g. DFC 118 II 353, c. 3c *in fine* (the status as a nationalised company suffices); C. Oetiker, supra note 11, at Art. 177, N. 90.

18 'A party who knows that any provision of this [Model] Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.'

19 See e.g. Art. 40 ICC Rules 2021.

20 See e.g. DFC 141 III 210, c. 5.2, where it was decided that raising procedural objections late, although such objections could have been raised earlier in the proceedings, violates the principle of good faith (Art. 2 Swiss Civil Code).

21 P. Habegger, supra note 5, at 556–557.

22 E.g. Art. 184 PILA regarding the taking of evidence and Art. 185 PILA regarding 'any other judicial assistance'.

> a provisional or conservatory measure is to be enforced. Article 183(2) and (3) shall apply by analogy.
>
> (2) An arbitral tribunal sitting abroad or, with the consent of the arbitral tribunal, a party to a foreign arbitration may request the assistance of the state court at the place where the taking of evidence is to be carried out. Article 184(2) and (3) shall apply by analogy.

Finally, a typical feature of Swiss international arbitration law remains its one-stop shop for setting aside proceedings. The Swiss Federal Court serves as the 'sole judicial authority for recourse against an award' (Art. 191 PILA).

2. The arbitration agreement

The general content of the provisions dealing with the arbitration agreement in the Model Law (Arts. 7, 8, 9) and the PILA (Art. 178) appears to be by and large similar. Still there are some distinctive features of Swiss international arbitration law concerning the issues highlighted below.

Formal requirements

Mirroring Article II(1) of the New York Convention (the 'NYC'), the Swiss international arbitration law requires that arbitration agreements be concluded 'in writing'. However, this is not an overly strict standard. Already under the old version of Article 178(1) PILA, the 'writing' requirement was deemed to be complied with if the agreement could be 'evidenced by a text' without any strict requirement of a personal signature.[23] This has not changed. The revised Article 178(1) PILA[24] merely modernised the statutory language, no longer referring to 'telegram, telex, telecopier' as examples of means of communication.

The Swiss Federal Court has recently clarified that the formal requirements in Article 178(1) PILA are considered as congruent for all intents and purposes with those of the NYC. However, in light of the differences in the specific wording of the PILA and the NYC, the justification of such opinion remains the subject of legal debate, some commentators insisting that Article 178(1) PILA should allow a more flexible approach.[25]

The law applicable to the substantive validity of arbitration agreements

As for the law applicable to the substantive validity of arbitration agreements, the 2021 reform has not led to any modification. Still the corresponding statutory approach in Article 178(2) PILA warrants highlighting as a typical feature of Swiss international arbitration law:

> As regards its substance, the arbitration agreement shall be valid if it conforms to the law chosen by the parties, or to the law applicable to the dispute, in particular the law governing the main contract, or to Swiss law.

Article 178(2) PILA thus does not itself regulate the substantive law requirements of a valid arbitration agreement. Rather, the provision is a conflict of laws rule,[26] designating, in the alternative, three different laws for determining the substantive validity of arbitration agreements. It suffices that the arbitration agreement be valid under any one of the three, providing the parties with maximum flexibility.

This feature of Swiss arbitration law is often referred to as the internationally recognised '*favorem validitatis* principle' for arbitration agreements,[27] given that there is no hierarchy between the three alternative laws for determining the substantive validity of such agreements.[28] It illustrates the arbitration-friendly stance of Swiss international arbitration law.

Validity of arbitration clauses in a unilateral act or in articles of association

The 2021 reform has furthermore expressly clarified that unilateral arbitration clauses and those contained in articles of association are potentially valid from the perspective of Swiss international arbitration law.[29] The new Article 178(4) PILA provides:

23 This so-called '*Textform*' is a simplified version of the regular written form requirement under Swiss law ('*vereinfachte Schriftform*'), see D. Gränicher in P. Grolimund et al., supra note 8, at Art. 178, N. 21; C. Oetiker, supra note 11, at Art. 178, N. 16; C. Müller, O. Riske in M. Arroyo, supra note 11, at PILS Art. 178, N. 21; P.-Y. Tschanz in A. Bucher, supra note 11, at Art. 178, N. 24.

24 'The arbitration agreement shall be valid if made in writing or in any other manner that can be evidenced by text.'

25 See further S. Gabriel, 'Congruence of the NYC and Swiss lex arbitri regarding extension of arbitral jurisdiction to non-signatories, BGE 145 III 199 (BGer Nr. 4A_646/2018)' (2019) 37 No. 4 *ASA Bulletin*, 883 at 886–889.

26 DFC 119 II 380, c. 4.a); C. Oetiker, supra note 11, at Art. 178, N. 28; C. Müller, O. Riske in M. Arroyo, supra note 11, at PILS Art. 178, N. 33.

27 See e.g. G. Born, *International Arbitration: Law and Practice* (3rd ed., Wolters Kluwer, 2021) at §2.06[D].

28 See e.g. DFC 129 III 727, c. 5.3.2. Although, of course, there is a hierarchy in the sense that the most favorable law to the substantive validity of an arbitration agreement prevails, see P.-Y. Tschanz in A. Bucher, supra note 11, at Art. 178, N. 7.

29 For further details on the new provisions, see e.g. M. Burkhardt, 'Statutarische Schiedsklauseln nach Art. 697n E-OR 2018 und Art. 6 Ziff. 1 EMRK' in W. Portmann et al.,

> The provisions of this Chapter [12] shall apply by analogy to an arbitration clause set out in a unilateral legal act or in articles of association.

This provision will facilitate Swiss arbitration proceedings in particular in company- and trust-related matters, as well as in the context of inheritance disputes. The implementation of this provision will have to be clarified by the courts and academic writing.

Interpretation and scope of arbitration agreements

The Swiss Federal Court applies two different standards when interpreting arbitration agreements, depending on whether the issue at stake is the very existence of such arbitration agreement (in the sense of an agreement, i.e. consent, to exclude ordinary state court jurisdiction in favour of arbitration) or rather its objective scope.

Given that the recognition of an arbitration agreement limits access to state court justice, which is protected by Article 6 of the European Convention on Human Rights and the Swiss Constitution, the Swiss Federal Court applies a *strict standard* when analysing whether or not the parties indeed agreed (consented) to exclude state court jurisdiction in favour of arbitration.[30]

It is sometimes formulated that a clear expression of the parties' will is required in this context.[31] What this means is that it is key to determine the parties' *consent*. Such consent can be proven by the parties' *subjective intent* but also established by way of an *objective interpretation* of party behaviour.[32] As a consequence, an *express* oral or written statement is *not* required under Swiss law. For instance, the Swiss Federal Court has accepted 'extensions' of arbitration agreements to 'non-signatories' in the following situations:[33] (i) an assignment of claim, assumption of debt, or transfer of contract;[34] (ii) a third party's intentional interference with the performance of a contract in full knowledge that the contract was subject to arbitration;[35] and (iii) the conclusion of a contract for the benefit of a third party,[36] in which case the third party must respect the arbitration agreement (unless otherwise stated therein).[37]

In this context of 'extensions' of arbitration agreements to 'non-signatories', it should be noted that the somewhat simplified formal requirements of Article 178(1) PILA[38] need to be met only once — when the initial arbitration agreement is concluded — and by the initial parties.[39] If the formal requirements were initially met, they need not be met again by others that are considered to be bound by the arbitration agreement subsequently, or that may participate in arbitral proceedings.[40] Whether a third party not mentioned in the arbitration agreement is bound by such arbitration agreement is thus a substantive matter of consent, which is to be determined under the laws applicable to the substantive validity of arbitration agreements pursuant to Article 178(2) PILA, irrespective of the fact that such third party may not have been able to comply itself with the formal requirements established by Article 178(1) PILA.[41]

Finally, once it has been ascertained that an arbitration agreement indeed 'exists', and that the relevant (initial) parties chose to exclude state court jurisdiction in favour of arbitration, the precise scope of such arbitration agreement may still need to be determined as to the matters covered. In this context, the Swiss Federal Court relaxes the standard of interpretation. When determining the *objective scope* of arbitration agreements, it interprets the wording of such agreements widely.[42] This is because, according to the Swiss Federal Court, it must be presumed that the parties wanted an arbitral tribunal to have comprehensive jurisdiction to deal with the entirety

Gedenkschrift für Claire Huguenin (Dike, 2020), 67; P. Habegger, J. Landbrecht, 'Zwischen vertraglichem Konsens und grundrechtlichem Zwang – Die unfreiwillige Schiedsgerichtsbarkeit' in W. Portmann et al., *id.*, 123. On the old law, see e.g. C. Oetiker, supra note 11, at Art. 178, N. 93-95.

30 See e.g. DFC 4A_342/2019, 6.1.2020, c. 3.2; 4A_150/2017 of 4.10.2017, c. 3.2; DFC 4A_432/2017 of 22.1.2018, c. 3.2; C. Oetiker, supra note 11, at Art. 178, N. 67; P.Y. Tschanz in A. Bucher, supra note 11, at Art. 178, N. 121 et seq.

31 See e.g. P. Rihar, 'Scope and Interpretation of Arbitration Agreements under Swiss Law' (2021) *ICC Dispute Resolution Bulletin*, 55 at 56.

32 See e.g. DFC 4A_342/2019, 6.1.2020, c. 3.2: joint subjective intent of the parties, and, if such intent cannot be established, determination of the presumed intent (*mutmasslicher Wille*) according to the principle of good faith (*Vertrauensprinzip*).

33 For a recent detailed analysis, see S. Pfisterer, B. Gross, 'BGer 4A_124/2020: Ausdehnung einer Schiedsklausel auf einen Dritten aufgrund dessen Einmischung in den (Haupt-)Vertrag' (2021) *AJP*, 515.

34 C. Oetiker, supra note 11, at Art. 178, N. 145 et seq.; D. Girsberger, N. Voser, supra note 16, at N. 303.

35 C. Oetiker, supra note 11, at Art. 178, N. 162; C. Müller, O. Riske in M. Arroyo, supra note 11, at PILS Art. 178, N. 72.

36 C. Oetiker, supra note 11, at Art. 178, N. 151.

37 A summary of this case law can be found in DFC 4A_627/2011 of 8.3.2012, c. 3.2.

38 Art. 178(1) is quoted above, supra note 24.

39 See e.g. DFC 145 III 199, c. 2.4: the formal requirements in Art. 178(1) PILA concern only the declarations of the (initial) parties to the arbitration agreement.

40 See D. Gränicher in P. Grolimund et al., supra note 8, at Art. 178, N. 14–16.

41 The leading case on this issue is DFC 129 III 727, c. 5.3.1; see also DFC 145 III 199, c. 2.4; 134 III 565, c. 3.2.

42 See e.g. DFC 4A_342/2019 of 6.1.2020, c. 3.3; DFC 4A_583/2017 of 1.5.2018, c. 3.3.

of their dispute, irrespective of whether the parties expressed that intention particularly clearly in their arbitration agreement.[43]

3. The composition of the arbitral tribunal

The PILA provisions relating to the composition of the arbitral tribunal are amongst those most thoroughly revised in 2021, although the goal was primarily to render them more accessible, and to codify the case law of the Swiss Federal Court, rather than to introduce major modifications.

A comparison with the corresponding rules in the Model Law (Arts. 10–15) reveals again a difference in style rather than fundamental differences as to substance. While containing largely similar rules, the Swiss approach appears slightly more streamlined as explained below.

Clarifications to the appointment and replacement of arbitrators

The overarching approach to the appointment and replacement of arbitrators remains the recognition of party autonomy in Article 179(1)(1) PILA[44]. The 2021 reform added default rules in Article 179(1)(2) PILA,[45] in case the parties have not exercised their autonomy. The revised Article 179(2) PILA[46] furthermore clarifies the possible recourse, if so required, to Swiss state courts. In order to provide maximum flexibility, any competent court in Switzerland can be asked to assist with the appointment of arbitrators. Swiss courts will assist, as they have always done, unless the arbitration agreement is, upon a summary examination, considered to be inexistent (Art. 179(3) PILA[47]). The new Article 179(4)[48] PILA sets out the procedure to be adopted by the competent court, and the new Article 179(5) PILA[49] establishes a court appointment mechanism to deal with multi-party disputes in order to ensure equal influence of all parties on the appointment of the arbitral tribunal.

Finally, the new Article 179(6) PILA[50] expressly obliges prospective as well as appointed arbitrators to monitor and disclose potential conflicts.

Challenge

While the *grounds* for a potential challenge of arbitrators in Article 180 PILA[51] remained unaffected by the 2021 reform, a new provision clarifies the relevant *procedure*. Article 180a now provides:

> (1) Unless the parties have agreed otherwise and if the arbitral proceedings are not yet concluded, the request for challenge shall be addressed, with reasons and in writing, to the challenged arbitrator and notified to the other arbitrators within 30 days of the requesting party becoming aware, or exercising due diligence ought to have become aware, of the ground for challenge.
>
> (2) The requesting party may, within 30 days of the submission of the request for challenge, challenge the arbitrator before the state court. The decision of the state court is final.
>
> (3) Unless the parties have agreed otherwise, during the challenge procedure the arbitral tribunal may proceed with the arbitration and render an award, with the participation of the challenged arbitrator.

In line with previous case law,[52] Article 180a PILA stipulates that the start of the time-limit for challenging an arbitrator is to be determined objectively ('exercising

43 See e.g. DFC 138 III 681, c. 4.4.

44 'The arbitrators shall be appointed and replaced in accordance with the parties' agreement.'

45 'Unless the parties have agreed otherwise, the arbitral tribunal shall consist of three arbitrators, whereby two of the arbitrators are appointed by each of the parties and the two arbitrators so appointed unanimously select the third arbitrator as the president of the tribunal.'

46 'In the absence of an agreement or if the arbitrators cannot be appointed or replaced for other reasons, the matter may be referred to the state court at the seat of the arbitration. If the parties have not designated a seat or have merely agreed that the seat of the arbitration shall be in Switzerland, the state court first seized shall have jurisdiction.'

47 'If a state court is called upon to appoint or replace an arbitrator, it shall grant such request, unless a summary examination shows that no arbitration agreement exists between the parties.'

48 'At the request of a party, the state court shall take the necessary action to constitute the arbitral tribunal if the parties or arbitrators fail to fulfil their obligations within 30 days of being called upon to do so.'

49 'In the case of a multi-party arbitration, the state court may appoint all arbitrators.'

50 'A person who has been approached to serve as arbitrator must promptly disclose any circumstances that may give rise to justifiable doubts as to his or her independence or impartiality. This obligation shall persist for the duration of the proceedings.'

51 '(1) An arbitrator may be challenged: (a) if that arbitrator does not meet the qualifications agreed upon by the parties; (b) if a ground for challenge exists under the arbitration rules agreed upon by the parties; (c) if circumstances exist that give rise to justifiable doubts as to that arbitrator's independence or impartiality. (2) A party may challenge an arbitrator whom it has appointed or in whose appointment it has participated only for reasons of which, despite having exercised due diligence, it became aware of only after the appointment.'

52 See e.g. DFC 136 III 605, c. 3.2.2.

due diligence ought to have become aware'). Remaining willfully ignorant would be abusive and amount to a violation of the principle of good faith.

While Article 180a(1) PILA concerns scenarios in which the ground for challenge is discovered, or should have been discovered, *during* the arbitral proceedings, the new Article 190a(1)(c) PILA adds an extraordinary remedy ('revision') in case such ground is discovered *after the conclusion* of the arbitral proceedings, provided no other remedy, in particular a challenge pursuant to Article 190(2)(a) PILA, is available:[53]

> A party may request the revision of an award: ... (c) if, despite having exercised due diligence, a ground for challenge under Article 180(1)(c) was not discovered until after the conclusion of the arbitration and no other remedy is available.

Removal

Finally, a new provision, Article 180b(1) PILA, deals with the removal of arbitrators and provides that arbitrators may be removed by the parties jointly, without establishing a specific formal requirement:

> Any arbitrator may be removed by agreement of the parties.

It should be noted that Article 180b(1) PILA only concerns the arbitrators' function (*'Amt'*), of which they may be relieved by the parties without restrictions. The termination of the arbitrator 'contract',[54] with its effect in particular on the arbitrators' remuneration, is a separate issue.

Finally, Article 180b(2) PILA[55] now provides for a mechanism to unilaterally remove an arbitrator, with the assistance of state courts, in case of extraordinary circumstances of incapacity.

53 On the genesis of this provision see in detail P. Habegger, supra note 5, at 551–554.

54 In Swiss arbitration literature, the contractual basis of the relationship between arbitrators and the parties is also referred to as the *receptum arbitri*, see e.g. B. Berger, F. Kellerhals, supra note 2, at N. 963–965; D. Girsberger, N. Voser, supra note 16, at N. 16; S. Pfisterer, A.K. Schnyder, *Internationale Schiedsgerichtsbarkeit. In a Nutshell* (2nd ed., Dike 2021) at 75.

55 'Unless the parties have agreed otherwise, if an arbitrator is unable to perform his or her duties within a reasonable time or with due diligence, a party may apply, with reasons and in writing, to the state court for the arbitrator's removal. The decision of the state court is final.'

4. Arbitral proceedings

The jurisdiction of arbitral tribunals and parallel proceedings

As under most modern arbitration laws, Swiss-seated arbitral tribunals are explicitly authorised to decide on their own jurisdiction, subject to final review by the state courts at the challenge or enforcement stage. The general rule under Swiss international arbitration law concerning the arbitral tribunal's authority to decide on its jurisdiction (corresponding to Art. 16 Model Law) is Article 186 PILA,[56] which has not been altered by the 2021 reform.

Article 186(1bis) PILA is thereby a unique feature of Swiss international arbitration law. It clarifies that an arbitral tribunal is not expected to entertain *lis alibi pendens* considerations in case a state court is seized also, either prior to the initiation of arbitral proceedings or subsequently. According to its wording,[57] the provision applies irrespective of whether the state court in question is in Switzerland or abroad.[58] Yet in case a *Swiss* court is seized prior to an arbitral tribunal, it has to be borne in mind that it would ultimately be the Swiss Federal Court that determines, for the purposes of Swiss law, the arbitral tribunal's jurisdiction (Art. 190(2)(b) PILA). Against this background, a tribunal will have to carefully assess whether to entertain *lis alibi pendens* considerations notwithstanding the fact that Article 186(1bis) PILA would seem to authorise the tribunal to simply ignore the pending state court proceedings. The risk of having the award set aside will often provide 'substantial reasons to stay the [arbitral] proceedings' (Art. 186(1bis) PILA).

Swiss state courts, on the other hand, that are seized with an action that appears to fall under an arbitration agreement, shall decline jurisdiction pursuant to Article 7 PILA, irrespective of whether arbitral proceedings are already pending. In this context, a Swiss court would only make a summary assessment of the tribunal's jurisdiction (as the final jurisdiction decision for the purposes of Swiss law in any event

56 '(1) The arbitral tribunal shall decide on its own jurisdiction. (1bis) It shall decide on its jurisdiction notwithstanding any pending action before a state court or another arbitral tribunal on the same subject-matter between the same parties, unless there are substantial reasons to stay the proceedings. (2) Any plea of lack of jurisdiction must be raised prior to any defence on the merits. (3) The arbitral tribunal shall, in general, decide on its jurisdiction by means of a preliminary award.'

57 Similarly C. Oetiker, supra note 11, at Art. 186, N. 41.

58 Yet A. Furrer, D. Girsberger, D. Schramm, *Handkommentar zum Schweizer Privatrecht* (3rd ed., Schulthess, 2016) at IPRG 182-186, N. 27, submit that Art. 186(1bis) only concerns state court proceedings abroad.

belongs to the Swiss Federal Court[59]) unless the issue is one of arbitrability or the very existence of an arbitration agreement.[60] Unlike in Swiss *domestic* arbitration (Art. 372(2) Swiss CCP), however,[61] state courts are *not* required by statute to defer, on the basis of *lis alibi pendens* considerations, to pending Swiss *international* arbitral proceedings.[62]

Article 181 PILA clarifies the point in time at which the arbitral proceedings are 'pending':

> The arbitral proceedings shall be pending from the time when a party submits a claim with the arbitrator or arbitrators designated in the arbitration agreement or, in the absence of such designation, from the time when a party initiates the procedure for the constitution of the arbitral tribunal.

In practice, Article 181 PILA has an important (albeit limited) role to play where a party seeks to unilaterally interrupt the running of limitation periods, as the exact *substantive* effect of initiating arbitral proceedings on limitation periods depends on the applicable substantive law. If Swiss law applies to the substance of the claim, the submission of a statement of claim or defense to an arbitral tribunal indeed interrupts the limitation period (pursuant to Art. 135 No. 2 Swiss Code of Obligations). However, such submission of a 'statement of claim' requires that the claimant actually specifies its claim. This is more than what would suffice procedurally under Article 181 PILA, i.e. to get the proceedings 'pending', because for Article 181 PILA to apply it would suffice to merely initiate the procedure for the constitution of the tribunal (no specification of the claim required).[63]

Finally, Article 178(3) PILA expressly recognises, in line with international standards, the doctrine of separability:

> The validity of an arbitration agreement cannot be contested on the grounds that the main contract may not be valid or that the arbitration agreement relates to a dispute that has not yet arisen.

Interim measures and preliminary orders

Swiss-seated arbitral tribunals are authorised, subject to the parties' agreement to the contrary, to issue provisional and conservatory measures. The 2006 revision of the Model Law introduced a rather verbose regulation of interim measures and preliminary orders by arbitral tribunals (Arts. 17–17J). Article 183 PILA remains considerably more succinct:

> (1) Unless the parties have agreed otherwise, the arbitral tribunal may, at the request of a party, order provisional or conservatory measures.
>
> (2) If the party concerned does not voluntarily comply with the measure so ordered, the arbitral tribunal or a party may request the assistance of the state court; such court shall apply its own law.
>
> (3) The arbitral tribunal or the state court may make the order of provisional or conservatory measures conditional on the provision of appropriate security.

The 2021 reform of this provision newly introduced only the independent possibility of a party to 'request the assistance of the state court' in case of non-compliance by the opposing party (Art. 183(2) PILA), without the arbitral tribunal having to authorise such request.

The conduct of arbitral proceedings

The organization of arbitral proceedings is the tribunal's task, unless the parties have specifically agreed on the arbitral procedure. The provisions of the Model Law on the conduct of arbitral proceedings (Arts. 18–27) are also much more detailed than the corresponding provisions of Swiss international arbitration law. The latter rests on two pillars, namely party autonomy and, in case the parties have not exercised it, the arbitral tribunal's authority to determine the procedure as it sees fit (Art. 182(1) and (2) PILA):

> (1) The parties may determine the arbitral procedure, directly or by reference to arbitration rules; they may also submit it to a procedural law of their choice.
>
> (2) If the parties have not determined the procedure, the arbitral tribunal shall determine it to the extent necessary, either directly or by reference to a law or to arbitration rules.

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59 DFC 138 III 681, c. 3.3 ('*summarische Prüfungsbefugnis*').

60 The details are not yet settled in Swiss international arbitration law. See e.g. A. Furrer, D. Girsberger, D. Schramm, supra note 58, at IPRG 182-186, N. 28, citing DFC 140 III 367, c. 2.2.3. The latter decision deals, in the sense described in the text above, with the parallel situation in *domestic* arbitration law (Art. 61 Swiss CCP). Similarly DFC 144 III 235, c. 2.1.

61 See F. Dasser in P. Oberhammer, T. Domej, U. Haas, *Kurzkommentar Schweizerische Zivilprozessordnung* (3rd ed., Helbing, 2021) at Art. 372, N. 13.

62 *Id.* at Art. 61, N. 6.

63 S. Pfisterer in P. Grolimund et al., supra note 8, at Art. 181, N. 26; C. Oetiker, supra note 11, at Art. 181, N. 39; M. Stacher, M. Feit in M. Arroyo, supra note 11, at PILS Art. 181, N. 16.

Article 182(3) PILA provides that the tribunal's discretion is limited by the fundamental principles of equal treatment and the parties' right to be heard in adversarial proceedings.[64] The 2021 reform has not modified this straightforward approach that has withstood the test of time.

One further provision deals with the taking of evidence, namely Article 184 PILA:

> (1) The arbitral tribunal shall conduct the taking of evidence itself.
>
> (2) If the assistance of state judicial authorities is required 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 at the seat of the arbitration.
>
> (3) The state court shall apply its own law. Upon request, it may apply or consider other forms of procedure.

The last paragraph, which was added in 2021 for clarification purposes, aims at increasing the flexibility of the support provided by Swiss courts, as Swiss courts can apply forms of procedure other than their own.

5. Arbitral Awards

The making of an award and the termination of the proceedings

Under Swiss international arbitration law, the modalities of the making of arbitral awards (see Arts. 28–33 Model Law) are also left to the parties' agreement or the tribunal's determination. Article 187 PILA contains a standard conflict of laws rule concerning the law applicable to the substance of the dispute, enshrining yet again party autonomy as the guiding principle of Swiss international arbitration law:

> (1) The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence thereof, according to the rules of law with which the dispute has the closest connection.
>
> (2) The parties may authorise the arbitral tribunal to decide ex aequo et bono.

Article 187 PILA is the exclusive conflict of laws rule concerning the applicable substantive law in Swiss arbitration law. Swiss international arbitration law thus follows the *voie directe* approach,[65] i.e. it designates itself, via the conflict rule in Article 187 PILA, the applicable law, rather than referring to conflict of laws rules of some domestic law.[66] Or, in other words, the Swiss arbitrator determines the applicable substantive law directly, rather than choosing directly only the applicable conflict of laws rules (as prescribed by Art. 28(2) Model Law), which in turn point to the applicable substantive law (*voie indirecte*).

A further specificity of Swiss law is Article 188 PILA, authorizing partial awards (*Teilentscheid*):

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

However, only substantive decisions dealing finally with a separable part of the overall claim, or dealing with an individual claim while other claims remain undecided for the time being, are considered partial awards in the sense of Article 188 PILA, i.e. partial awards *stricto sensu* according to the case law of the Swiss Federal Court.[67] Partial awards have *res judicata* effect according to the general rules.[68]

Notwithstanding this, separate decisions on preliminary issues, such as jurisdiction, liability, applicable law, statute of limitations, etc. are also possible in Swiss international arbitral proceedings.[69] For instance, Article 186(3) PILA clarifies that an 'arbitral tribunal shall, in general, decide on its jurisdiction by means of a preliminary award'.

In distinction to partial awards, such preliminary awards ('*Vor-* or *Zwischenentscheid*') do not have the normal *res judicata* effect outside the respective proceedings. Still, the arbitral tribunal having issued such preliminary awards is bound by them and by its opinions voiced therein.[70] Preliminary awards may be challenged only on limited grounds (Art. 190(3) PILA).

64 'Regardless of the chosen procedure, the arbitral tribunal shall ensure equal treatment of the parties and their right to be heard in adversarial proceedings.'

65 B. Berger in P. Grolimund et al., supra note 8, at Art. 187, N. 8; P. Burckhardt, R. Meier in M. Arroyo, supra note 11, at PILS Art. 187, N. 4.

66 On this approach in general, see D. Girsberger, N. Voser, supra note 16, at N. 1408–1409.

67 DFC 130 III 755, c. 1.2.2; 130 III 76, c. 3.1.2; 128 III 191, c. 4.a).

68 DFC 128 III 191, c. 4.a); C. Oetiker, supra note 11, at Art. 188, N. 8.

69 See P. Habegger, supra note 5, at 561. On partial and preliminary awards in detail, see N.J. Zaugg, *Verfahrensgliederung in der internationale Schiedsgerichtsbarkeit. Wirkungsweise von Teil- und Zwischenschiedssprüchen unter dem 12. Kapitel IPRG* (Schulthess, 2014).

70 DFC 128 III 191, c. 4.a); 112 Ia 166, c. 3.d).

Article 189 PILA furthermore contains relevant formalities for arbitral awards,[71] and a new provision was introduced in 2021 to deal with corrections of an award (Art. 189a PILA):

> (1) Unless the parties have agreed otherwise, either party may, within 30 days of the notification of the award, request the arbitral tribunal to correct any clerical or computational errors in the award, to interpret certain parts of the award or to issue a supplement to the award on claims which were raised in the arbitral proceedings but not dealt with in the award. Within the same time limit, the arbitral tribunal may, on its own initiative, correct, interpret or supplement the award.
>
> (2) The request does not suspend the time limits for recourse against the award. With respect to the corrected, interpreted or supplemented part of the award, the time limit for recourse shall start anew.

Challenge

Awards governed by the PILA may normally be challenged only on the basis of limited grounds set out in Article 190 PILA.[72] As already highlighted above, the Swiss Federal Court serves as the 'sole judicial authority for recourse against an award' (Article 191 PILA), thus serving as one-stop shop for recourse against arbitral awards.[73]

Unlike Article 34 of the Model Law (the provision on general recourse against arbitral awards), Article 190(2)(d) PILA specifically refers to the equal treatment of the parties and their right to be heard in adversarial proceedings. The prominence of these principles can be explained by the fact that they serve, as discussed above, as main guideposts for arbitral tribunals when the latter are to conduct the arbitral proceedings, provided the parties have not made more specific arrangements (Art. 182(3) PILA). Whether there is a difference as to the substance will depend on the Model Law jurisdiction concerned.

While the general architecture of this provision and the grounds for challenge remained unaltered with the 2021 reform, some clarifications and amendments were made concerning the *procedure* to follow.

First, to make Chapter 12 as clear and user-friendly as possible, Article 190(4) PILA repeats the time limit for a challenge – also stipulated in Article 100(1) of the Federal Supreme Court Act of 17 June 2005 (the 'FSCA') (*Bundesgerichtsgesetz*):

> The time limit for the challenge is 30 days from the notification of the award.

It is important to highlight that 'notification' does not necessarily require formal service.[74] Pursuant to Article 189(1) PILA, awards are to be 'rendered in conformity with the rules of procedure and in the form agreed upon by the parties', which can include an oral rendering of the award. The German version of the PILA refers to *'Eröffnung'* of the award, not *'Zustellung'*. The French version refers more generally to the *'communication de la sentence'*. In any event, a courtesy advance copy of arbitral awards, as for instance usually communicated by the ICC Court to the parties by e-mail, does *not* trigger the time limit in Article 190(4) PILA.[75]

Second, as a much-discussed new feature of the 2021 reform, submissions to the Swiss Federal Court in challenge proceedings may now be filed in *English* (see Art. 77(2bis) FSCA).[76] While *exhibits* in English were already accepted previously, the new rule permits the filing of *full briefs* in English without any translation. Since the majority of international arbitration proceedings seated in Switzerland are conducted in English and may involve parties who are not fluent in any of the Swiss official languages (French, German, and Italian), this amendment may help reduce the required time and costs of challenge proceedings in some cases. On the other hand, it is to be cautioned against involving indiscriminately counsel from outside of Switzerland to conduct such challenge proceedings. It is to be noted that the Swiss Federal Court renders

71 '(1) The award shall be rendered in conformity with the rules of procedure and in the form agreed upon by the parties. (2) In the absence of such agreement, the award shall be made by a majority decision or, in the absence of a majority, by the presiding arbitrator alone. The award shall be made in writing, with reasons, dated and signed. The signature of the presiding arbitrator is sufficient.'

72 '(1) The award is final from the time when it is notified. (2) The award can only be challenged on the grounds that: (a) the sole arbitrator was not properly appointed or the arbitral tribunal was not properly constituted; (b) the arbitral tribunal wrongly accepted or declined jurisdiction; (c) the arbitral tribunal decided claims which were not submitted to it or failed to decide claims submitted to it; (d) the principle of equal treatment of the parties or their right to be heard in adversarial proceedings was violated; (e) the award is incompatible with public policy. (3) Preliminary awards can only be challenged on the grounds of paragraph 2(a) and (b); the time limit runs from the notification of the preliminary award…'

73 For a detailed comparison of Swiss setting aside provisions with one specific Model Law jurisdiction, namely Spain, see A. Levin Canal, V. Alarcón Duvanel, 'Annulment of Commercial Arbitral Awards by State Courts. A Comparative Study of Spain and Switzerland' (2021) 39 No. 2 *ASA Bulletin*, 333.

74 See P. Habegger, supra note 5, at 561–562.

75 DFC 4A_582/2009, 13.4.2010, c. 2.1.2.

76 See in detail J. Landbrecht, 'Rechtsschriften an das Bundesgericht in englischer Sprache – nur in welcher?' (2021) 39 No. 2 *ASA Bulletin*, 306.

procedural orders and decisions in one of the Swiss official languages; counsel must therefore be familiar with these languages. In addition, the Swiss Federal Court conducts its procedure and decides the merits of challenge proceedings on the basis of Swiss law; it is therefore imperative that counsel be well-versed in *Swiss law* specifically. Instructing counsel only on the basis of his or her general command of the *English language* induces a significant risk of confusion between foreign law and Swiss law concepts, in particular if such foreign counsel is 'well-versed' only in the terminology of an English language jurisdiction. Finally, the requirements for substantiating grounds for a challenge before the Swiss Federal Court are high and not easily met.[77]

From a statistical point of view, the chances of success for challenging Swiss international arbitral awards remain in any event low (around 8% success rate).[78]

Waiver of recourse

Under certain circumstances, the parties may exclude challenges against arbitral awards *ex ante*. A further specificity of Swiss law, which is not envisaged in the Model Law, is the possibility for parties without any link to Switzerland to fully exclude any recourse against arbitral awards pursuant to Article 192 PILA.[79] The provision itself has remained largely untouched. The 2021 reform only clarified the formal requirements by referring to Article 178(1) PILA.

Article 192(2) PILA demonstrates that *Swiss* international awards can, by party agreement, be transformed into *foreign* awards. It is the NYC that will then be applied ('by analogy') to their recognition and enforcement also in Switzerland.

Revision

The 2021 reform has codified the Swiss Federal Court's case law[80] for an additional and *extraordinary* remedy against arbitral awards, the so-called 'revision', where awards are tainted by criminal acts or if substantial and relevant new evidence has surfaced (Art. 190a PILA):

> (1) A party may request the revision of an award: (a) if it subsequently discovers material facts or conclusive evidence which, despite having exercised due diligence, it was unable to invoke in the previous proceedings; facts and evidence which postdate the award are excluded; (b) if criminal proceedings have established that the award was influenced, to the detriment of the challenging party, by a crime or misdemeanour, even in the absence of any conviction; if criminal proceedings cannot be pursued, proof can be furnished by other means; (c) if, despite having exercised due diligence, a ground for challenge under Article 180(1)(c) was not discovered until after the conclusion of the arbitration and no other remedy is available.
>
> (2) The request for revision must be filed within 90 days of the discovery of the ground for revision. Except in cases provided for by paragraph 1(b), the right to request revision shall expire ten years from the date on which the award has come into force.

The existing case law of the Swiss Federal Court regarding the revision of arbitral awards had been based on Article 123 FSCA by analogy.[81] The purpose of the 2021 reform was to codify that case law, without alteration. This remedy is a safety-valve, but although it is now codified, we do not consider that it will gain much (additional) traction. To date, it has played only a very minor role in practice.[82]

77 DFC 4A_338/2018 is a good illustration of this point. The challenging party raised 59 grounds for challenge. The Swiss Federal Court was not impressed. See on this decision S. Gabriel, '59 Setting Aside Arguments Rejected as Inadmissible' (2019) *dRSK*, 14 Jan. 2019.

78 For the latest statistics, see F. Dasser, P. Wójtowicz, 'Swiss International Arbitral Awards Before the Federal Supreme Court. Statistical Data 1989-2019' (2021) 39 No. 1 *ASA Bulletin*, 7, in particular at 15–16.

79 '(1) If none of the parties has its domicile, habitual residence, or seat in Switzerland, the parties may, either in the arbitration agreement or in a subsequent agreement, exclude in whole or in part recourse against arbitral awards; the right to revision under Article 190a(1)(b) cannot be waived. The agreement shall meet the conditions as to form set out in Article 178(1). (2) If the parties have excluded any recourse against arbitral awards and such awards are to be enforced in Switzerland, the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards shall apply by analogy.'

80 See S. Pfisterer in P. Grolimund et al., supra note 8, at Art. 190, N. 111–119; C. Oetiker, supra note 11, at Art. 190, N. 139–149; M. Stacher, *Einführung in die internationale Schiedsgerichtsbarkeit der Schweiz* (Dike 2021) at N. 468-478.

81 See S. Pfisterer in P. Grolimund et al., supra note 8, at Art. 190, N. 114; C. Oetiker, supra note 11, at Art. 190, N. 140.

82 A recent (successful) example, reported widely in the press, involved an arbitrator hostile towards parties generally from a specific country, see DFC 4A_318/2020, 22.12.2020.

Recognition and enforcement of arbitral awards

The recognition and enforcement of arbitral awards is regulated by Swiss law in accordance with international standards. Foreign arbitral awards are recognised and enforced in Switzerland in accordance with the NYC. Article 194 PILA[83] incorporates this treaty into Swiss law by simple reference.

Swiss arbitral awards are enforced in Switzerland as if they were state court judgements (Art. 387 with Arts. 335–346 Swiss CCP; Art. 190(1) PILA with Arts. 335–346 Swiss CCP by analogy).[84] In order to facilitate enforcement, and provide to authorities, in Switzerland or abroad, proof that the Swiss court at the seat considers the award to be enforceable in Switzerland, Article 193 PILA (by and large unaffected by the 2021 reform) provides as follows:

> (1) Any party may, at its own expense, deposit a copy of the award with the state court at the seat of the arbitration.
>
> (2) At the request of a party, the state court at the seat of the arbitration shall certify the enforceability of the award.
>
> (3) At the request of a party, the arbitral tribunal shall certify that the award has been rendered in conformity with the provisions of this Act; such certificate has the same effect as the deposit of the award.

6. Conclusion

The 2021 reform of the Swiss international arbitration law (Chapter 12 PILA) followed a light touch approach. It rendered Swiss international arbitration law more accessible and transparent by codifying case law of the Swiss Federal Court and by incorporating into Chapter 12 PILA matters previously only expressly regulated in the Swiss CCP.

The Model Law and the PILA both respect the importance of, and bolster, party autonomy. Yet they follow different approaches when regulating the situation where parties have not exercised their autonomy. While the Model Law proposes a significant number of default rules, the PILA mainly empowers the arbitral tribunal to guide the proceedings. In the Swiss context, and with many highly experienced arbitrators available, this approach has served the users of arbitration well.

83 'The recognition and enforcement of a foreign arbitral award is governed by the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.'

84 B. Berger, F. Kellerhals, supra note 2, at N. 2006–2021.