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In-Depth: Dispute Resolution (formerly The Dispute Resolution Review) provides an indispensable overview of the civil court systems in major jurisdictions worldwide. It examines the key aspects of each jurisdiction's dispute resolution rules and practice, and developments over the past 12 months. It is also forward-looking, with astute analysis of likely future trends and developments.

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Switzerland

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Summary

Introduction

Switzerland is a popular country for international dispute resolution and is frequently chosen by international parties. This is attributable not only to Switzerland's neutrality but also to the fact that the court system is reliable, fair and balanced, and decisions are rendered reasonably quickly.

The court system is characterised by the federal structure of Switzerland. In civil litigation, the procedural rules for civil litigation have been harmonised through the adoption of the Civil Procedure Code (CPC) in 2011, but the organisation of the civil courts and conciliation authorities generally remained in the competence of the cantons. Consequently, each canton has its own court system. Federal law, however, sets certain minimal standards, such as due process and the principle of double instance.

For certain commercial matters, each canton has the possibility to set up a commercial court with sole cantonal jurisdiction. The cantons of Zurich, St Gallen, Bern and Aargau have made use of this possibility. Patent disputes are excluded from the cantonal jurisdiction and are dealt with by the Federal Patent Court. The Swiss Federal Supreme Court (SFSC) is the highest court in Switzerland and ensures that federal law is applied uniformly.

Year in review

The Swiss Federal Supreme Court (SFSC) has rendered several important decisions concerning civil litigation in the recent past.

It is generally accepted that for time limits under the Civil Procedure Code (CPC) which are expressed in days, the calendar day following the triggering event is day 1 of the time limit. In a decision which caught many by surprise, the SFSC now ruled that for time limits expressed in months, the time limit begins to run right on the day of the triggering event. The SFSC held that this interpretation of the law is the most compelling and necessary to harmonise time limits under the CPC with the European Convention on the Calculation of Time Limits in Civil, Commercial and Administrative Matters.[1]

While entries in the Swiss commercial register are deemed notorious and self-evident facts so that they do not need to be proven and are to be taken into account by the court *ex officio*, the SFSC ruled that entries in foreign commercial registers are not considered to be notorious and self-evident facts within the meaning of the CPC, even if those registered are accessible online.[2]

Under Article 5 Paragraph 3 of the Lugano Convention, a respondent may be sued in matters relating to tort in the courts at the place where the harmful event occurred or may occur. The SFSC ruled that in product liability cases this includes the place of development.[3]

In a case relating to investment treaty arbitration, the SFSC held that Swiss courts are not bound by the European Court of Justice's decision in *Republic of Moldova v. Komstroy* when reviewing the jurisdiction of a Swiss arbitral tribunal in an intra-EU investment arbitration.

Applying the Vienna Convention on the Law of Treaties, the SFSC found that the European Court of Justice's decision was neither binding for Swiss courts nor compelling and that the unconditional consent to arbitration in the arbitration provision of the Energy Charter Treaty also covers intra-EU disputes.[4]

The SFSC held that the decision of a foreign arbitral tribunal denying its own jurisdiction is binding for Swiss state courts if the arbitral award is final and recognisable in Switzerland. As a consequence, a previous decision of a (different) state court in the same dispute which denied its jurisdiction due to the existence of a supposed arbitration agreement is no longer decisive.[5]

Under Swiss law, a party may request a revision of an arbitral award if a ground for challenge of an arbitrator only came to light after conclusion of the arbitration proceedings. The SFSC clarified that in such revision proceedings the applicant must prove that the ground for challenge existed at the time of the award and that post-award statements by an arbitrator indicating a possible bias do not suffice unless the applicant proves that the bias existed during the proceedings.[6]

In the context of the enforcement of a decision on claims which were subject to a condition subsequent, the SFSC held that the court concerned with the enforcement of a judgment, while it must check upon objection of the debtor if the condition has been fulfilled, may not interpret the condition subsequent and therefore must refuse enforcement of the claim if the content of the condition cannot be determined with certainty.[7]

Under Swiss law, a creditor who has obtained a freezing order over assets of the debtor may be held liable for any damage caused to the debtor by such freezing order if it eventually turns out that the freezing order was not justified. The SFSC recently held that this liability scheme also applies to freezing orders issued by the tax authorities to secure tax claims.[8]

While usually the recognition of foreign bankruptcy decrees in Switzerland requires recognition proceedings, the SFSC recently found that the Agreement between certain Swiss cantons and the Kingdom of Bavaria on the Equal Treatment of Each Other's Nationals in Bankruptcy Cases dated 11 May 1834 is still in force so that Bavarian bankruptcy decrees are automatically recognised in the contracting cantons.[9] A similar convention exists between several Swiss cantons and the former Crown of Baden-Württemberg.

Court procedure

Overview of court procedure

Civil litigation is usually preceded by conciliation proceedings before a cantonal conciliation authority.[10] If no settlement is reached, the claimant may file an action in the first instance court.[11] Decisions of the first instance court may be challenged before the second instance court. Decisions of the second instance court may in turn be appealed to the SFSC. Decisions of the SFSC are final with the exception that they may be challenged before the European Court of Human Rights in Strasbourg on grounds of a violation of the European Convention on Human Rights.

Procedures and time frames

Conciliation proceedings

During the conciliation hearing, the parties shall attempt to settle their dispute amicably to avoid court proceedings. The claimant may initiate conciliation proceedings by filing a request with the competent cantonal conciliation authority. The request must identify the counterparty and include the prayers for relief as well as a description of the dispute. The hearing has to take place within two months of receipt of the request. Statements made by the parties during the hearing are not recorded and they may not be used in subsequent proceedings. If the parties fail to reach an agreement, the claimant (in certain rent and lease matters, the rejecting party) may file an action with the first instance court within three months.[12]

The costs depend on the canton and are typically based on the amount in dispute. The costs range from 50 Swiss francs to up to 10,000 Swiss francs, but in most cantons the cap is lower. In certain social matters, the conciliation proceedings are free of charge.[13]

Under certain circumstances, no conciliation proceedings take place, such as in summary proceedings (as described below), for certain actions under the Debt Enforcement and Bankruptcy Act (DEBA) or in disputes before a cantonal commercial court. Furthermore, the parties may mutually waive the conciliation proceedings if the amount in dispute exceeds 100,000 Swiss francs. The claimant may unilaterally skip the conciliation proceedings if the defendant's domicile is abroad or unknown.[14]

First instance court proceedings

The CPC provides for three different types of proceedings: ordinary; simplified; and summary proceedings. In family law matters, special proceedings may apply but they will not be further discussed in this chapter.

Summary proceedings

Summary proceedings are the fastest and cheapest way to obtain a decision under the CPC and may be brought in all cases designated by law, including interim measures (as described below), clear cases (as described below) and certain actions under the DEBA and the Federal Act on Private International Law (PILA), as well as non-contentious matters.[15] While a written or oral application is sufficient to initiate summary proceedings, evidence must be provided in the form of physical records. Oral evidence is permissible only on an exceptional basis. Summary proceedings can include a hearing, but the court may also render its decision solely based on the court file.[16] The time frame of summary proceedings typically ranges from a few weeks to several months.

Simplified proceedings

Simplified proceedings apply in matters with an amount in dispute below 30,000 Swiss francs and, regardless of the amount in dispute, in certain social matters. The claimant initiates simplified proceedings by filing a reasoned or unreasoned statement of claim. The

court then either invites the counterparty to respond in writing or summons the parties to a hearing directly.[17] Simplified proceedings typically take a few months.

Ordinary proceedings

In all other cases, the ordinary proceedings apply with usually two exchanges of written briefs (statement of claim or statement of defence and reply or rejoinder) followed by a main hearing, including the taking of evidence. The court may also, at any time, hold instruction hearings to discuss the dispute in an informal manner, to conduct settlement negotiations or to prepare the main hearing. The defendant may file a counterclaim if such claim is subject to ordinary proceedings as well.[18] Ordinary proceedings usually take between one and two years, sometimes longer.

Court fees

Court fees depend on the canton and may vary significantly. The claimant is usually requested to advance the estimated costs at the beginning of the proceedings. As of 1 January 2025, claimants will only have to advance half of the expected costs. Costs are ultimately determined and allocated by the court in the final decision. In general, the losing party must bear the costs, which are set off against the advance paid by the claimant. In case of settlement, the parties may agree on a different cost allocation. In addition to the court costs, the losing party must pay the prevailing party a compensation for attorney fees, which is determined by the court in line with the applicable cantonal tariff and usually does not fully cover the actual fees.[19]

Second instance court proceedings

There are two main appellate remedies: the appeal and the complaint proceedings. An appeal against a first instance decision is permissible if the amount in dispute exceeds 10,000 Swiss francs. It is, however, excluded for decisions in relation to enforcement actions and certain actions under the DEBA. The appeal constitutes a comprehensive remedy in the sense that the appellant may contest the decision on the grounds of incorrect application of the law and incorrect determination of facts. The legal force and enforceability of the contested decision are suspended for the duration of the appeal proceedings (i.e., 'suspensive effect'), subject to certain exceptions (e.g., interim measures). However, the appellate court may authorise early enforcement. The appeal must be lodged with the second instance court within 30 days of service of the respective decision (summary proceedings: 10 days). New facts and evidence are permissible if submitted immediately and if they could not have been submitted before. The counterparty is granted a time limit to file a response unless the court concludes that the appeal has no merit anyway. The appellate court has the possibility to hold a hearing but rarely does and normally decides based on the case file. It may nevertheless take evidence if necessary. In its decision, the appellate court may confirm the challenged decision, make a new decision (including on costs) or reverse the decision and remand the case to the first instance court.[20]

Complaints constitute the second appellate remedy. They are available against final and interim decisions of the first instance court that are not subject to appeal or if the law

allows only this remedy. A complaint is more limited than an appeal as only an incorrect application of law and an evidently incorrect determination of facts may be challenged. Moreover, the filing of a complaint does not generally have a suspensive effect, and new facts and evidence are not admissible. Decisions in complaint proceedings are almost exclusively rendered without a hearing.[21]

Appellate proceedings may take between a few weeks to approximately two years, depending on the canton and the specific circumstances of the case. The costs for appellate proceedings are typically a bit lower than the first instance costs.

Proceedings before the Swiss Federal Supreme Court

The SFSC constitutes the final instance. The main remedy is the complaint. A complaint in civil matters is admissible against a final or partial decision of the highest cantonal civil court or courts, which act as the only instance (e.g., commercial courts). Preliminary and interim decisions may be challenged before the SFSC only if certain statutory requirements are met. The amount in dispute must be at least 15,000 Swiss francs in employment and tenancy law cases and 30,000 Swiss francs in all other cases. In certain cases, such as if a legal question of fundamental importance is to be decided, a complaint is admissible regardless of the amount in dispute. The appellant may claim a violation of federal law, international law and cantonal constitutional rights.[22] If a complaint is not admissible, the appellant may file a subsidiary constitutional complaint instead, which is limited to the violation of constitutional rights.[23] Proceedings before the SFSC usually take a few months to a year. The costs are governed by the federal tariff[24] and range from 200 Swiss francs to 200,000 Swiss francs, depending on the amount in dispute.

Interim measures

The court having jurisdiction over a matter or the court at the place where the measure is to be enforced may order interim measures. It may order any interim measure suitable to prevent imminent harm, usually an injunction or an order to remedy an unlawful situation. The applicant must provide prima facie evidence that:

1. a right to which it is entitled has been violated or a violation is anticipated; and
2. this violation threatens to cause harm to the applicant that is not easily reparable.

In cases of extraordinary urgency, interim measures may be ordered immediately and without hearing the counterparty. The court may, however, order the applicant to provide security and amend or revoke the interim measure if necessary after having granted the counterparty a right to be heard.[25] Requests for *ex parte* interim measures are usually dealt with within 24 to 72 hours.

Clear cases

The CPC finally provides for expedited (summary) proceedings in cases where the facts are undisputed or immediately provable and the legal situation is clear. The respective

decision has full legal effect and may be enforced like any other final decision. If the court finds that the case is not clear enough, it will dismiss the claim without prejudice.[26]

Class actions

As a matter of principle, legal action must be initiated by the individuals concerned. Two or more persons may jointly appear as claimants or be sued as defendants if their rights or obligations result from similar circumstances or legal grounds.[27] The Swiss legal system, however, is not familiar with class actions where a claimant initiates legal proceedings on behalf of a larger class of persons who are not named claimants. The CPC provides for an exception only where associations or other organisations of national or regional importance are mandated by their articles of association to protect the interests of a certain group of individuals (i.e., 'group action'). In this case, an organisation may bring an action in its own name and request the court to prohibit an imminent violation, eliminate an ongoing violation or establish an ongoing violation. Damage awards are not possible.[28] The SFSC recently dismissed a collective consumer protection action in connection with the Volkswagen emission scandal, arguing that the foundation that brought the claims had no standing to do so.[29] A revision of the CPC to introduce new collective remedies such as a class action with an opt-in possibility or group settlements was discussed by the Parliament not long ago but ultimately postponed.

Representation in proceedings

Any natural or legal person with legal capacity to act may be a party in civil litigation and, consequently, represent itself. Natural persons who represent a legal person must be duly authorised to act on behalf of the company. This also applies for the conciliation proceedings. If a third party that is not registered in the commercial register aims to represent a legal person in conciliation proceedings, the SFSC has held that a general commercial power of representation is required and that a simple power of attorney is not sufficient.[30]

Parties are entitled (but not required) to appoint a legal representative in litigation proceedings. With a few exceptions, the professional representation of parties before civil courts is restricted to attorneys-at-law who are admitted to the Bar.

Service out of the jurisdiction

Parties that are domiciled abroad may be requested by the court to provide a service address in Switzerland. If service of process in Switzerland is impossible, the court needs to serve procedural documents in line with the applicable Hague Convention of 1965 or through diplomatic channels. Details on the service of process in a specific country may be found in the country index of the Federal Office of Justice.[31] If service attempts are unsuccessful, the court may also publish summonses and orders in the official gazette.[32]

Enforcement of foreign judgments

The enforcement of a foreign judgment depends on whether or not the judgment originates from a Member State of the Lugano Convention. Judgments rendered in a Member State

of the Lugano Convention (i.e., the European Union, Norway and Iceland) are automatically recognised[33] and can be enforced quite easily.

Judgments rendered in other states are enforced in accordance with the rules laid out in the PILA, which require that:

1. the jurisdiction of the state in which the judgment was rendered is valid from a Swiss law perspective;
2. the decision has become final; and
3. no grounds for a refusal exist (e.g., improper service and violation of due process).-[34]

In practice, an enforcement request is often combined with a request for a freezing order as the judgment creditor is entitled to request the attachment of (known) assets of the debtor in Switzerland and a freezing order puts quite some pressure to settle its debts voluntarily on the debtor.

As of 1 January 2025, the Hague Convention on Choice of Court Agreements will enter into force in Switzerland. The Hague Convention governs the exclusive choice of court agreements in international civil and commercial matters as well as the recognition and enforcement of judgments rendered by courts designated in such choice of court agreements. While the Lugano Convention will take precedence over the Hague Convention and therefore continues to apply, the Hague Convention will to a certain extent fill the gap left by Brexit in the recognition and enforcement of judgments rendered in the United Kingdom. However, unlike the Lugano Convention, the Hague Convention does not provide for automatic recognition and a simplified *ex parte* enforcement procedure. Rather, it refers to the law of the state in which enforcement is sought but provides for seven exhaustive and discretionary grounds for refusal. While grounds for refusal under the Hague Convention and the PILA are similar, the Hague Convention will ease some formalities required by the PILA.

Assistance to foreign courts

International judicial assistance in civil matters includes the service of documents and the taking of evidence. Service of process in Switzerland by a foreign state outside of the judicial assistance channels is generally considered a violation of Swiss territorial sovereignty.[35] According to the applicable Hague Conventions, the requesting state needs to forward a request to the competent cantonal central authority or the Federal Office of Justice in Berne, which then forwards the request to the competent authority. The request (e.g., service of process or a deposition of a witness) is executed in accordance with the law of the requested state (i.e., in Switzerland in accordance with the CPC). If the application of foreign law is requested, Swiss authorities try to accommodate insofar as this is compatible with Swiss law.

Access to court files

As a rule, court files are not public and may be consulted only by the parties. However, certain hearings are open to the public and access may be limited or denied only based on

overriding public or private interests.[36] Conciliation and family law proceedings are never public. Judgments of the SFSC and of many second instance courts are systematically published in anonymised form. In addition, judgments are made available for inspection at the court in non-anonymised form for a limited period right after they have been rendered.

Litigation funding

There are no statutory rules governing litigation funding, but the SFSC has ruled that litigation funding is permissible.[37] Although the Swiss litigation funding market is not particularly large, there are domestic and international funders that are active in Switzerland. If funding is granted, the client typically litigates the claim in their own name as it cannot authorise the funder to litigate the claim on their behalf.[38] An assignment of the claim to the funder is theoretically possible but rare in practice and typically limited to enforcement matters.

Legal practice

Conflicts of interest and Chinese walls

The Federal Act on the Free Movement of Lawyers (FMLA) sets out the principles for practising lawyers in Switzerland, complemented by the code of professional conduct of the Swiss Bar Association. Article 12(c) of the FMLA provides that lawyers must avoid any and all conflict between the interests of their clients and the interests of persons with whom they have a business or private relationship. First, this principle prohibits double representation (i.e., situations in which lawyers represent opposing parties in the same proceedings). Second, it generally prohibits lawyers from accepting a case against a client for whom they are conducting another mandate at the same time. Third, lawyers may not take on a new case if their factual knowledge gathered during a former mandate could harm the former client. Last, lawyers must obviously avoid conflicts with their own interests. No distinction is made between the lawyer and their law firm for conflict purposes. The SFSC has ruled that a law firm forms a 'confidentiality unit' and hence that Chinese walls between lawyers of the same law firm are unfit and do not remedy a conflict situation.[39]

Money laundering, proceeds of crime and funds related to terrorism

In Switzerland, a lawyer's activity that is covered and protected by the legal privilege and professional secrecy is not subject to the Federal Act on Combating Money Laundering and Terrorist Financing. In the context of dispute resolution, lawyers generally provide services that are covered by the attorney–client privilege. Thus, they are not subject to obligations in connection with money laundering and are, in particular, not required to perform know-your-customer checks or to report suspicious activities. However, any lawyer who knowingly accepts assets that originate from crime or relate to terrorism is liable to prosecution under the Swiss Penal Code.

Data protection

Lawyers are subject to the Federal Act on Data Protection (FADP) when they access and process personal data. Personal data may be processed lawfully only, meaning that its processing must be carried out in good faith and must be justified and proportionate. If the data processing takes place in the context of pending court proceedings, the FADP is not applicable. Instead, the rules laid down by the procedural codes apply to data processing, as for example the CPC. In addition to the obligations under the FADP and the procedural codes, lawyers must comply with their professional duties, in particular professional secrecy, when processing and disclosing data.

Documents and the protection of privilege

Privilege

In Switzerland, attorney–client communication is protected by attorney–client privilege. Lawyers are subject to professional secrecy for an unlimited period of time, and this applies to everyone regarding information that has been entrusted by their clients as a result of their profession.[40] To be protected, a communication between an attorney and a client must relate to the attorney's typical professional activity, meaning legal advice and legal representation.

Pursuant to Swiss procedural laws governing civil, criminal and administrative proceedings, a party to the litigation (as well as a third party) has the right to refuse to produce correspondence between themselves and an attorney.[41] On the same basis, the attorney and the client may refuse to testify with respect to attorney–client communications.[42]

Privilege is currently still limited to communication with attorneys admitted in Switzerland and the European Union. Furthermore, Swiss law limits attorney–client privilege to communications exchanged with independent attorneys. As things stand, privilege does not extend to communications with in-house counsel. As of 2025, in-house counsel may refuse to testify and produce work products if they or the general counsel have passed the Bar exam and the work products contain legal advice.

Swiss law also knows the concept of the 'without prejudice' privilege. It is, however, a professional obligation of lawyers not to disclose privileged communication, not a procedural rule. In other words, while a Swiss lawyer may not introduce 'without prejudice' correspondence in proceedings, an unrepresented party or a party represented by counsel not subject to similar obligations theoretically could, as they are not the addressee of the obligation. The court may, however, still decide to disregard the communication if it was exchanged in the course of true settlement negotiations.

Production of documents

If a document required by one party to prove its case is in the possession of the opponent or a third party, a request for the production of the document may be made in the course of the proceedings. In contrast to the common law understanding of document production, the document must be identifiable, and relevance and materiality must be demonstrated.

Fishing expeditions are not permitted. Upon request, the court decides whether to order production. If a request is granted, the opposing party is supposed to surrender the document to the court. However, the court cannot force a party to produce a document. If the party refuses to produce the document without valid cause, the court may, however, presume that the fact, which the requesting party aims to prove with the document, is established. The situation is different if the document is in the possession of a third party. In this case, the court can oblige the third party to produce documents and may enforce such obligation.

A document is deemed to be in the possession of a party if that party has direct access to it, such as physically, via information technology systems or because the party has a contractual or statutory right to obtain a document from an agent or service provider. A litigant is, in principle, not required to obtain documents from related parties for production purposes if it has only indirect access to such documents. However, a related party may be addressed directly and ordered to produce evidence. Documents in possession of parties abroad and not accessible in Switzerland must be obtained by the court by way of international legal assistance.

Alternatives to litigation

Overview of alternatives to litigation

The most commonly used alternative to litigation in Switzerland is arbitration. Other forms of alternative dispute resolution (ADR) include mediation and expert determinations. Except for arbitration, the alternatives to litigation are not extremely popular because the litigation process includes mechanisms to settle disputes at an early stage.

Arbitration

Switzerland has a long arbitration tradition and is frequently chosen as the seat of arbitration by international parties. According to the statistics of the International Chamber of Commerce (ICC), Switzerland was among the top three most frequently chosen seats for ICC arbitration worldwide in 2023.[43]

Swiss law governing arbitration is in two parts: domestic arbitration is governed by Part 3 of the Civil Procedure Code (CPC)[44] while the framework for international arbitration is found in Chapter 12 of the Federal Act on Private International Law (PILA).[45] Arbitration is considered international if, at the time the arbitration agreement was concluded, at least one of the parties did not have its domicile, habitual residence or seat in Switzerland.-[46] Swiss arbitration laws are very liberal and grant the parties significant discretion on how to structure the proceedings. Chapter 12 of the PILA was recently revised to make arbitration in Switzerland even more accessible and attractive. An arbitration agreement must be concluded in any form allowing it to be evidenced by text. The validity of the arbitration agreement is assessed independent from the main contract.[47] In international arbitration, any claim that involves an economic interest may be submitted to arbitration.-[48] In domestic arbitration, a claim is arbitrable only if the parties may freely dispose over it.[49]

Institutional commercial arbitration seated in Switzerland is most commonly administered by the ICC or the Swiss Arbitration Centre. Furthermore, there are specialised arbitral institutions, such as the Court of Arbitration for Sports for sports disputes and the WIPO Arbitration and Mediation Center of the World Intellectual Property Organization for intellectual property and technology disputes.

When it comes to remedies against awards rendered by tribunals seated in Switzerland, Swiss law provides for an action to set aside[50] and an action to revise[51] arbitration awards. The SFSC is the only single instance. The grounds for a setting aside are very limited and only 7 per cent of the setting aside petitions are successful. Actions to revise an award are almost never successful. Decisions on remedies against awards are rendered quickly (i.e., within seven months on average). If none of the parties is seated in Switzerland, they may completely waive the right to setting aside proceedings.[52]

Foreign arbitral awards are recognised and enforced in Switzerland according to the New York Convention (NYC). There is, in principle, no stand-alone exequatur procedure, but awards are recognised in the course of ordinary debt enforcement proceedings. Usually, a freezing order can be obtained based on a foreign arbitral award if the debtor or assets belonging to the debtor, or both, are in Switzerland. The formal requirements of the NYC are applied pragmatically by the Swiss courts, and the grounds for refusal of recognition are narrowly interpreted.

Mediation

Swiss law does not provide a mandatory framework for mediation. Instead, the CPC allows for the replacement of the mandatory conciliation proceedings by mediation and provides that court proceedings may be suspended at any time for the benefit of mediation proceedings.[53] Organisation and conduct of mediation are up to the parties and separate from conciliation and court proceedings.[54] Statements of the parties made during mediation may not be used in court proceedings.[55] An agreement reached through mediation can be granted the effect of a legally binding decision through court approval.[56] Mediation is frequently used in family law matters but rather uncommon in commercial matters. This is because the commercial litigation process is typically structured in a way that helps reaching settlements.[57]

Other forms of ADR

Swiss law provides that parties may agree on expert determination of disputed facts.[58] If they do, the determination by the expert is usually binding for the court, which is what distinguishes it from a usual expert opinion in civil court proceedings. The court is not bound if the parties are not free to dispose of the subject of the expert determination, grounds for recusal existed against the expert, or the opinion has not been stated in an impartial manner or is manifestly incorrect.[59] Other forms of ADR are not frequently used in Switzerland.

Outlook and conclusions

The Swiss Parliament approved a major revision of the Civil Procedure Code (CPC) in 2023. The goal of the revision is to increase the accessibility of the judiciary and to improve the practicability of the law. The revised law enters into force on 1 January 2025. Important changes include:

1. reduction of the advance on court costs: going forward, only half of the entire anticipated court costs (not all of them) are to be advanced by the claimant;
2. procedural language: if the cantons allow for this possibility, in the future, parties will be able to choose one of the national languages (German, Italian and French), even if this is not an official language at the seat of the court. Furthermore, in international commercial matters, parties will be able to choose English as the language of the proceedings;
3. the joinder of claims and parties will be easier in the future;
4. remote participation: the revised law will provide the necessary basis to allow for videoconferencing to be used in Swiss civil procedures. Remote hearings and witness interrogation will, however, only be permissible if all parties agree;
5. voluntary conciliation hearing prior to proceedings before the commercial court: currently, a claimant who wants to litigate a claim before one of the commercial courts must file a fully fledged statement of claim to commence the proceedings. In the future, the claimant will have the option to move for a conciliation hearing before a magistrate judge prior to filing a fully fledged statement of claim with the commercial court, which gives claimants an easy and low-cost option to interrupt the statute of limitations against defendants seated abroad, and will ideally lead to more settlements; and
6. right of a party to refuse cooperation in civil proceedings: in order to eliminate procedural disadvantages of Swiss compared to foreign companies, the revised law will grant Swiss in-house counsel a right to refuse to cooperate in civil proceedings under certain conditions.

Finally, there is an ongoing legislative project that aims at introducing some sort of class action procedure. However, it is not yet clear what the time frame is and whether the proposal will be supported by a parliamentary majority.

Acknowledgements

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Endnotes

1 Decision of Federal Supreme Court 5A_691/2023 of 13 August 2024, cons. 4. ^ Back to section

2 DFC 150 III 209, cons. 2.2 and 2.5. ^ Back to section

3 Decision of Federal Supreme Court 4A_249/2023 of 22 April 2024, cons. 3 and 4. Back to section

4 Decision of Federal Supreme Court 4A_244/2023 of 3 April 2024, cons. 7. Back to section

5 Decision of Federal Supreme Court 4A_621/2023 of 6 August 2024, cons. 6.4.2. Back to section

6 Decisions of Federal Supreme Court 4A_288/2023 and 4A_572/2023 of 11 June 2024, cons. 7.3.4. Back to section

7 Decision of Federal Supreme Court 4A_151/2024 from 22 August 2024, cons. 3. Back to section

8 Decision of Federal Supreme Court 5A_487/2023 from 2 April 2024, cons. 2.4.1 and 2.5.4. Back to section

9 Decision of Federal Supreme Court 5A_751/2023 from 29 April 2024, cons. 4.5.2.-4.5.5. Back to section

10 Article 197 CPC. Back to section

11 Article 209(1) and 209(3) CPC. Back to section

12 Articles 197–209 CPC. Back to section

13 Article 113(2) CPC. Back to section

14 Articles 198–199 CPC. Back to section

15 Article 248 CPC. Back to section

16 Articles 252–256 CPC. Back to section

17 Articles 243–247 CPC. Back to section

18 Article 219 et seq. CPC. Back to section

19 Articles 95–112 CPC. Back to section

20 Articles 308–318 CPC. Back to section

21 Articles 319–327a CPC. Back to section

22 Articles 72–77 Act on the Swiss Federal Supreme Court (SFSCA). Back to section

23 Articles 113–119 SFSCA. Back to section

24 Tariff for court costs in Federal Supreme Court proceedings of 31 March 2006 (SR 173.110.210.1). Back to section

25 Articles 261–269 CPC. Back to section

26 Article 257 CPC. Back to section

27 Known as 'joinder of parties', see Articles 70–71 CPC. Back to section

28 Article 89 CPC. Back to section

29 Decision of Federal Supreme Court 4A_483/2018 of 8 February 2019. Back to section

30 DFC 141 III 159. Back to section

31 Country index in the guide to international legal assistance published by the Federal Office of Justice (https://www.rhf.admin.ch/rhf/de/home/rechtshilfefuehrer/laenderindex.html). Back to section

32 Article 141(1) CPC. The same applies in administrative procedures (see Article 36 Administrative Procedure Act (APA)); however, not in criminal procedures. Back to section

33 Article 33(1) Lugano Convention. Back to section

34 Article 25 PILA. Back to section

35 See Article 271 of the Swiss Criminal Code. Back to section

36 Article 54 CPC. Back to section

37 DFC 131 I 223, cons. 4.8. Back to section

38 DFC 137 III 293, cons. 3.2. Back to section

39 DFC 145 IV 218. Back to section

40 Article 13(1) FMLA. Back to section

41 Articles 160, 163 and 166 CPC; Articles 171 and 264 Criminal Procedure Code; Articles 13, 16 and 17 APA. Back to section

42 Article 13(1) FMLA; Article 166(1)(b) CPC; Article 171 Criminal Procedure Code. Back to section

43 ICC Dispute Resolution Statistics 2023, p. 11. Back to section

44 Article 353 et seq. CPC. Back to section

45 Article 176 et seq. PILA. Back to section

46 Article 176(1) PILA. Back to section

47 Article 178(3) PILA; Article 357(2) CPC. Back to section

48 Article 177 PILA. Back to section

49 Article 354 PILA. Back to section

50 Article 190 PILA; Article 389 et seq. CPC. Back to section

51 Article 190a PILA; Article 396 et seq. CPC. Back to section

52 Article 192(1) PILA. Back to section

53 Articles 213 and 214 CPC. Back to section

54 Article 216(1) CPC. Back to section

55 Article 216(2) CPC. Back to section

56 Article 217 CPC. Back to section

57 In 2023, 54 per cent of the disputes in front of the tribunal of the Commercial Court Zurich were settled: 193. Rechenschaftsbericht des Obergerichts des Kanton Zürich über das Jahr 2023, A.2.5.3. Back to section

58 Article 189(1) CPC. Back to section

59 Article 189(3) CPC. Back to section

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