THE DISPUTE RESOLUTION REVIEW

Tenth Edition

Editor
Damian Taylor

THE LAWREVIEWS

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TENTH EDITION

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CONTENTS

PREFACE

The Dispute Resolution Review provides an indispensable overview of the civil court systems of 37 jurisdictions. It offers a guide to those who are faced with disputes that frequently cross international boundaries. As is often the way in law, difficult and complex problems can be solved in a number of ways, and this edition demonstrates that there are many different ways to organise and operate a legal system successfully. At the same time, common problems often submit to common solutions, and the curious practitioner is likely to discover that many of the solutions adopted abroad are not so different to those closer to home.

In my home jurisdiction, all eyes have been fixed firmly on the progress of Brexit negotiations with the EU. This edition includes an updated Brexit chapter that charts the progress (or lack thereof) made over the past year. Hopefully we will be able to write in the next edition with more certainty about the future laws and procedures that will apply to cross-border litigation in the UK and across the EU, much of which will be affected by the outcome of the ongoing negotiations.

Attention has also focused on more common issues. The rules of disclosure tend to have a habit of coming under periodic review and proposed new rules are out for consultation in England and Wales once again. This raises questions that are relevant to all jurisdictions that strive towards the common goal of justice at a reasonable price. Has litigation become too document heavy and expensive? Is technology a help or a hindrance? How can its power be harnessed, without adding to the parties' burdens? Is full disclosure suitable for all cases; should a lighter-touch regime be available, with liberty to apply for specific documents – a solution which this book shows has been adopted in many other jurisdictions and in arbitrations?

This tenth edition follows the pattern of previous editions where leading practitioners in each jurisdiction set out an easily accessible guide to the key aspects of each jurisdiction's dispute resolution rules and practice, and developments over the past 12 months. *The Dispute Resolution Review* is also forward-looking, and the contributors offer their views on the likely future developments in each jurisdiction. Collectively, the chapters illustrate the continually evolving legal landscape, responsive to both global and local developments.

Finally, I would like to express my gratitude to all of the contributors from all of the jurisdictions represented in *The Dispute Resolution Review*. Their biographies start at page 585 and highlight the wealth of experience and learning from which we are fortunate enough to benefit. I would also like to thank the whole team at Law Business Research who have excelled in managing a project of this size and scope, in getting it delivered on time and in adding a professional look and finish to the contributions.

Damian Taylor
Slaughter and May
London
February 2018

Chapter 32

SWITZERLAND

Daniel Eisele, Tamir Livschitz and Anja Vogt[1]

I INTRODUCTION TO THE DISPUTE RESOLUTION FRAMEWORK

The substantive civil law of Switzerland and its law on civil procedure is regulated at federal law level, whereas the judiciary in Switzerland's 26 cantons is organised by each individual canton on its own. Even though a civil law country, court precedent is of utmost practical significance in Switzerland, mostly in terms of interpretation, but occasionally also in terms of development of the law.

The Swiss Code of Civil Procedure[2] (CCP) prescribes the principle of double instance for the judiciary of the cantons, which means that each canton must, besides a court of first instance, establish an appeal instance with full power of review. Decisions of the appeal court may then be appealed to the Swiss Federal Tribunal – the highest court in Switzerland – where the grounds for appeal are ordinarily limited to violations of federal and constitutional law. The proceedings before the Swiss Federal Tribunal are governed by the Federal Act on the Swiss Federal Tribunal.[3]

As an exception to the aforementioned principle of double instance at the cantonal level and deriving from the cantonal power to organise its judiciary (e.g., the functional and subject matter jurisdiction of the courts), the cantons are given the right to establish a specialised court as the sole cantonal instance to hear commercial disputes, whose decision may only be appealed to the Swiss Federal Tribunal. So far only four cantons (Zurich, Berne, St Gallen and Aargau) have made use of this right and have established a specialised commercial court.

In certain specialised fields of law such as intellectual property, competition and antitrust law, claims against the Swiss government and disputes relating to collective investment schemes, federal law requires the cantons to designate a court of exclusive first instance jurisdiction. Moreover, for disputes relating to patents the Federal Patent Court is competent to hear the case and the proceedings are governed by the Federal Act on the Federal Patent Court.

The principle of double instance furthermore does not apply in arbitration matters, be it domestic or international. The sole instance of appeal in domestic arbitration proceedings is the Swiss Federal Tribunal, unless the arbitrating parties explicitly agree on a cantonal court as sole appeals instance. Similarly, in international arbitration proceedings the Swiss Federal

1 Daniel Eisele and Tamir Livschitz are partners and Anja Vogt is an associate in the dispute resolution team of Niederer Kraft & Frey. The authors wish to sincerely thank Jean-Michel Ludin, junior associate at Niederer Kraft & Frey, for his valuable contribution and assistance in the preparation of this chapter.

2 Swiss Code of Civil Procedure of 19 December 2008.

3 Federal Act on the Swiss Federal Tribunal of 17 June 2005.

Tribunal acts as the sole appeals instance for arbitral awards, unless the possibility to appeal has been excluded by the arbitrating parties, which is, however, only admissible if none of the arbitrating parties is domiciled in Switzerland.

II THE YEAR IN REVIEW

In the past year, the Swiss Federal Tribunal has rendered a number of notable decisions. A few selected decisions will be summarised hereinafter. Namely, the Swiss Federal Tribunal confirmed that it is generally permissible for attorneys to agree on a success premium in addition to professional fees (calculated based on an hourly rate) with their clients (see Section II.i below). The Swiss Federal Tribunal also found that the right to appeal an arbitral award may be waived in a mere email (see Section II.ii below). The Swiss Federal Tribunal further rendered a decision elaborating on the absolute necessity to raise a plea of lack of jurisdiction anew at every stage of a arbitral proceeding as otherwise a party risks entering an unconditional appearance to a tribunal's jurisdiction (see Section II.iii below). The Swiss Federal Tribunal also clarified that the competence of an arbitral tribunal to decide on an underlying claim to an attachment does not imply the tribunal's competence to also render a decision concerning the validation of the attachment order within the deadline required by law (see Section II.iv below).

i Remuneration for services rendered by attorneys in contentious matters: Success premium in addition to professional fees is generally permissible under Swiss law

When a client engages an attorney the former usually would like to know on what basis the latter is charging for the services rendered. In this regard, the Federal Lawyers' Act[4] (FAFML) stipulates the professional rules of attorney conduct. To this effect, the Swiss Federal Tribunal has repeatedly confirmed that for contentious matters Swiss lawyers are prohibited from agreeing on pure contingency fees (*pactum de quota litis*) under Article 12 lit. e FAFML. Such provision, prohibiting exclusive profit quota agreements, stipulates that attorneys may not agree to receive a portion of the winnings from litigation as a replacement for professional fees (e.g., calculated based on hourly rates). In a recent decision, the Swiss Federal Tribunal has now clarified that, in contrast to (prohibited) pure contingency fees, an agreement on a success premium payable in addition to professional fees (*pactum de palmario*) is generally permissible provided that certain conditions and limitations are observed.

In the case submitted to the Swiss Federal Tribunal for review, the mandate agreement between an attorney and a client provided for an hourly rate of 700 Swiss francs as well as for a success fee of 6 per cent in relation to a succession-related dispute. Upon completion of the mandate, the client received an invoice from the attorney for an aggregate amount of approximately 1,060,000 Swiss francs (consisting of hourly rates in the amount of approximately 590,000 Swiss francs and a success fee of approximately 470,000 Swiss francs). After a total of 560,000 Swiss francs of the invoiced amount was paid by the client, the attorney filed a claim against the client demanding payment of the outstanding amount. While the court of first instance dismissed the attorney's claim in its entirety, the claim was

4 Federal Act on the Freedom of Movement for Lawyers of 23 June 2000.

granted in part by the court of appeal which held that the fee agreement of the parties was generally permissible under Swiss law. Subsequently, the client appealed the decision to the Swiss Federal Tribunal.

The Swiss Federal Tribunal had to elaborate whether Article 12 lit. e FAFML, besides the *pactum de quota litis*, also prohibits the *pactum de palmario*. Commencing with the interpretation of the wording of said provision, the Swiss Federal Tribunal noted that while Article 12 lit. e FAFML prohibits the replacement of professional fees in their entirety with a success premium, a *pactum de palmario*, providing for professional fees only supplemented with an additional success premium, appears to be permitted. The Swiss Federal Tribunal then went on to elaborate on the rational of Article 12 lit. e FAFML stating – in agreement with the legal doctrine – that said provision primarily aims at protecting clients from being taken unfair advantage of while at the same time the provision ensures that the attorneys' independence is not lost due to personal financial interests in the outcome of a case. The Swiss Federal Tribunal explained that any success fee bears inevitable risks; such as attorneys rashly concluding a mediocre settlement agreement to receive the success fee, even though with additional effort and more time a better settlement could have been achieved. However, the Swiss Federal Tribunal also recognised that this risk is considerably reduced if a success fee is only paid in addition to – and not as a substitute for – professional fees, as the professional fees provide for a certain economic security that in turn strengthens the attorneys' independence. To conclude, the Swiss Federal Tribunal found that the rationale of Art. 12 lit. e FAMFL does not call for a prohibition of a *pactum de palmario*. Nevertheless, in order to ensure the attorneys' independence and to minimise the risk of unconscionability, the following three prerequisites need to be cumulatively met for a *pactum de palmario* to be valid:

a irrespective of the outcome of a case, the fees payable ought to covers the attorney's costs and allows the attorney to turn an adequate profit;

b professional fees and success premium must not be in a proportion affecting the attorney's independence or creating a risk of unconscionability (while the Swiss Federal Tribunal did not set a ceiling it stated that the success premium may in any case not be higher than the professional fees; and

c the success premium may only be agreed upon at the beginning or after the conclusion of the mandate, however, not during an ongoing mandate.

The Swiss Federal Tribunal found the fee agreement in the present case to have fulfilled the above prerequisites, with the exception of the last prerequisite listed above as the success premium was only agreed upon by the parties one year after the attorney accepted the mandate. Accordingly, the appeal by the client was upheld by the Swiss Federal Tribunal and the attorney was not able to recover his success premium.

ii Valid waiver of right to appeal against an arbitral award declared in an email

Another case decided by the Swiss Federal Tribunal exemplifies how an email that was incautiously sent combined with internal miscommunication may curtail a party of its available remedy against an arbitral award. The case concerned a publicly listed bank that was ordered by the sanction commission of Switzerland's principal stock exchange to pay a fine of 3 million Swiss francs. The stock exchange's arbitral tribunal subsequently dealing with this matter modified the sanction commission's decision and imposed a fine of 2 million Swiss francs on the bank. The bank appealed the award to the Swiss Federal Tribunal asserting a violation of its right to be heard as well the arbitral award to be arbitrary in its result because

it constitutes an obvious violation of law. In its reply, the stock exchange moved that the appeal be declared inadmissible as the bank had waived its right to appeal. In this regard, the stock exchange submitted an email sent by the bank's external counsel which included the following wording: 'I confirm – also in view of the information given concerning the fact that your client, the stock exchange will refrain from appealing the award to the Swiss Federal Tribunal – that our client decided not to lodge an appeal either.'

To start with, the Swiss Federal Tribunal reiterated that parties to a domestic arbitration may not waive their right to appeal the award in advance (i.e., before such award has been rendered). Under Swiss law, such waiver in advance is only admissible if none of parties to an international arbitration[5] have their domicile, habitual residence or a business establishment in Switzerland. The Swiss Federal Tribunal clarified that after an arbitral award is rendered, parties to a domestic arbitration may validly waive their right to appeal such award during the appeal period, either in relation to the arbitral tribunal or the counterparty.

The Swiss Federal Tribunal considered the email sent by the bank's external counsel to be a clear waiver of the right to appeal. It particularly rejected the bank's argument that said email merely constituted a statement of intent not to appeal so as to enable the stock exchange to publish a media release informing about the arbitral award and its consequences. The context of the email does not change its content and the Swiss Federal Tribunal held that the bank's external counsel did not only declare the intention of not lodging an appeal but irrevocably stated that the bank would not lodge such appeal. In this regard, the Swiss Federal Tribunal also elaborated that after intense discussions with the bank's in-house counsel and prior to sending the aforementioned email the external counsel was in fact of the opinion that the bank decided not to appeal the award. None of the involved counsel was, however, aware that the responsible bodies of the bank had not yet reached a decision on this issue. Once the responsible bodies of the bank became aware of the ongoing preparations to release a media statement concerning the arbitral award, a decision was taken to appeal against such award. However, by then the external counsel had already bindingly waived the bank's right to appeal. Accordingly, the Swiss Federal Tribunal declared the appeal inadmissible.

iii Entry of unconditional appearance in international arbitration

Lack of jurisdiction is one of the very few grounds stipulated in the Swiss Private International Law Act[6] (PILA) based on which an international arbitral award rendered in Switzerland may be appealed to the Swiss Federal Tribunal. In a recent case the Swiss Federal Tribunal decided to dismiss the appeal without entering into the substance of the case based on such grounds. It held that the appellants made an unconditional appearance on the merits without objecting to the arbitration's jurisdiction.

The case concerned 34 Australian football players suspected of having committed doping offences. After an initial investigation, the Australian Football League Anti-Doping Tribunal (AFL Tribunal) acquitted the players of any charges considering that a violation of the applicable anti-doping rules could not be proven. This decision was appealed to the Court of Arbitration for Sport in Lausanne, Switzerland (CAS) by the World Anti-Doping Agency (WADA). The CAS granted the appeal and suspended each of the players for two years. As

5 In principle, an arbitration is deemed international, if a least one party to the arbitration agreement has its domicile or habitual residence outside Switzerland at the time of the conclusion of the arbitration agreement.

6 Private International Law Act of 18 December 1987.

final remedy, the players appealed the CAS decision to the Swiss Federal Tribunal arguing that the CAS exceeded its jurisdiction by reviewing the facts and the law (de novo) while, according to the players, the CAS would have only had the power to conduct a limited review under the applicable anti-doping code.

In its decision, the Swiss Federal Tribunal considered that under Swiss law a plea of lack of jurisdiction must be raised prior to any defence on the merits. In case of any failure to timely raise jurisdictional objections, an arbitral tribunal's jurisdiction may, irrespective of a valid arbitration agreement, be established by unconditional appearance. In the case at hand, the players had raised their objections regarding the CAS's power of review already before pleading on the merits. However, in an order subsequently sent by the CAS to the parties, the former informed the latter that the case would be reviewed *de novo* despite the objections raised by the players. In addition, the order of procedure – signed by the appellants without any reservations – referred to the CAS Code stipulating that the panel has full power to review the facts and the law. The Swiss Federal Tribunal found that, despite their initial objections, the players made an unconditional appearance. It concluded that the players, represented by various attorneys, would have been expected in good faith to make a reservation to the order of procedure if they had wished to insist on their objection regarding the power of review. Accordingly, the Swiss Federal Tribunal held that the players' right to appeal the award to the Swiss Federal Tribunal based on such grounds was forfeited.

The decision illustrates that a plea of lack of jurisdiction should be raised anew at every stage of the proceeding. Otherwise, a party risks making an unconditional appearance to a tribunal's jurisdiction.

iv Validation of attachment order before an arbitral tribunal

In a very recent decision, the Swiss Federal Tribunal elaborated on and developed its practice regarding the validation of an attachment order before an arbitral tribunal. In the case submitted, the Swiss Federal Tribunal considered whether an arbitral award may be appealed based on the ground that said award included a ruling declaring an attachment to be validly validated ('The freezing order dated … has been validly validated').

Under Swiss debt enforcement law, debtors who have successfully applied for an attachment order must pursue their claim within 10 days to validate such attachment. If the respective proceeding is not commenced within such time limit, attachment orders lapse. The Swiss Federal Tribunal concluded that in case the parties have agreed too resolve a dispute by way of arbitration, the attachment order may be validated by submitting the underlying claim to an arbitral tribunal. In this regard, the attachment creditor must comply with the following two deadlines: first, within 10 days after having received the certificate of attachment, a creditor must have completed all steps necessary for the appointment of the arbitrators; second, within 10 days after the constitution of the arbitral tribunal, the creditor must submit its claim to the arbitral tribunal.

In its decision, the Swiss Federal Tribunal clarified that the competence of an arbitral tribunal to decide on an underlying claim to an attachment does not imply the arbitral tribunal's competence to also declare whether the attachment has been validated within the required deadline. Such decision is only for the relevant debt enforcement office to be rendered. Consequently, the Swiss Federal Tribunal found that the arbitral tribunal exceeded its jurisdictions by declaring the validation of an attachment.

III COURT PROCEDURE

i Overview of court procedure

The main statute governing civil procedure in Switzerland is the CCP. Besides civil procedure, the CCP equally governs debt collection proceedings in relation to non-monetary matters as well as domestic arbitration proceedings, unless the arbitrating parties opt out of its application.

Monetary debt collection matters are governed by the Federal Debt Enforcement and Bankruptcy Act (DEBA), whereas the recognition and enforcement of foreign judgments and foreign arbitral awards is predominantly regulated by the PILA as well as all relevant bilateral and multilateral agreements to which Switzerland is a party; the most important of these are the Lugano Convention and the New York Convention, respectively.

Predominantly, civil proceedings in Switzerland are governed by the principle that it is up to the parties to decide how, when, for how long and to what extent they wish to submit claims as plaintiffs, whether they wish to accept or contest such claims as defendants, or whether they wish to lodge or withdraw appeals. In the same vein, it is generally up to the parties to submit the factual allegations relevant to decide the dispute, and the court when assessing the matter may not take into account facts that have not been argued by the parties. In contrast thereto, certain proceedings – in particular (but not limited to) family law matters – are governed by the principle that the court has a certain obligation to collect and determine relevant facts to resolve the dispute.

Irrespective of any principle that may apply, Swiss civil proceedings are governed by the principle of iura novit curia (i.e., it is up to the court to apply the substantive law *ex officio* regardless of whether or not a party has invoked certain provisions of law). Put differently, when rendering a decision, a court may base its decision on legal provisions that the parties did not invoke at all. Of course, it goes without saying that the court would do so only after having heard the parties.

In proceedings before the Swiss Federal Tribunal acting as the last instance of appeal to review violations of, among others, fundamental rights, federal and cantonal or inter-cantonal law, and acting as sole instance of appeal in domestic and international arbitration proceedings, the principle of *iura novit curia* does not apply. Rather these proceedings are governed by a principle requiring the parties to point out explicitly and demonstrate what provisions of law are violated by the decision they appeal.

In terms of duration, a period of between three and seven years may be taken as a benchmark for a full litigation appealed through all instances up to the Swiss Federal Tribunal, depending on the court seized, the nature of the proceedings and whether or not an extensive procedure of taking of evidence is required.

ii Procedures and time frames

The three principal types of proceedings foreseen by the CCP are the ordinary, simplified and summary proceedings. Claims must be submitted under the ordinary proceedings unless the law expressly provides otherwise.

Ordinary proceedings can generally be split up into three phases:

a the pleading phase, where the parties must present and substantiate the factual basis of their claims and defences and offer evidence for them;

b the evidentiary phase, where the courts hear and review the evidence presented by the parties; and

c the post-hearing phase where the parties may comment on the outcome of the evidence proceedings and the court renders its decision.

Generally, and subject to a number of exceptions, state court civil proceedings in Switzerland are commenced by lodging a request for a conciliatory hearing, which is ordinarily a prerequisite for the filing of legal action in civil matters before state courts. In practice, the settlement rate for such conciliatory hearings can exceed 50 per cent (e.g., in the city of Zurich the conciliation authorities settled 64.4 per cent of the cases in 2016). However, in particular if the value in dispute is high, conciliatory hearings only rarely lead to a settlement of the dispute. Consequently, in cases where the value in dispute exceeds 100,000 Swiss francs, the CCP foresees a possibility for the parties to consensually waive the holding of such a conciliatory hearing. A plaintiff may furthermore waive the holding of a conciliatory hearing if, among other things, the defendant is domiciled outside Switzerland or if its whereabouts are unknown. The parties can agree to revert to mediation in lieu of holding a conciliatory hearing. However, should the mediation process fail, the plaintiff will have to request the issuance of a writ permitting them to file the claim from the body that would have held the conciliatory hearing had it not been replaced by the mediation process. In this respect, it is worth noting that for multiple reasons not many parties have in the past opted for mediation instead of a conciliatory hearing. Nonetheless, it appears that mediation as such is gaining more and more attention including in commercial disputes.

Simplified proceedings govern disputes with a value in dispute not in excess of 30,000 Swiss francs. Additionally, certain actions relating to very specific issues such as gender equality, aspects of tenancy law or data protection law are also to be brought under simplified proceedings irrespective of their value in dispute.

Simplified proceedings, like ordinary proceedings, are commenced by lodging a request to hold a conciliatory hearing as elaborated above. In the same way as ordinary proceedings, simplified proceedings are complete proceedings (i.e., there is no reduced scope of court review nor do any limitations as to adducing evidence apply). Rather, simplified proceedings generally provide for a facilitation of the pleading phase, where, for instance, the court supports the parties in their substantiation of the claim based on extended interrogation duties and with a view to supplement any incomplete facts of the case or to adduce adequate evidence. In addition, certain matters to be decided by means of the simplified procedure, such as certain tenancy and employment matters, require the court to collect the relevant facts of the dispute. Lastly, in terms of the duration of the proceedings, the court will work towards resolving the dispute during or following the first hearing of the case.

Summary proceedings are fast-track proceedings. No holding of a conciliatory hearing is necessary. The main characteristics of summary proceedings are that the parties may not avail themselves of all otherwise available means of claim and defence. In particular, the means of evidence admitted are, in principle, significantly restricted, while the standard of proof is reduced (generally to a standard of 'reasonable certainty').

Legal actions such as motions for interim relief (preliminary measures or injunctions) and claims where the facts are undisputed or immediately provable and where the law is clear are to be brought in summary proceedings. Furthermore, the CCP foresees the applicability of summary proceedings to certain specific proceedings, such as particular debt collection and bankruptcy proceedings or proceedings under Swiss company law (e.g., proceedings regarding special audits).

The DEBA fast-track proceedings for monetary debt collection matters addressed above also apply to the enforcement of monetary debts certified by domestic and foreign state court judgments as well as to domestic and foreign arbitral awards (where, with regard to foreign judgments and arbitral awards, the provisions of international agreements and treaties, such as the Lugano Convention or the New York Convention, are additionally taken into account).

iii Class actions

Swiss civil law procedure does not permit class actions. Thus, typically, claims must be brought by individual plaintiffs. However, a number of procedural tools under the CCP allow for multiple parties in civil law proceedings to act jointly, be it on the plaintiffs' or the defendants' side.

Under certain circumstances a group of plaintiffs must lodge their claims or be sued jointly (a 'mandatory joinder of parties'). Generally speaking this will be the case if the relationship between the members of the group is of a kind that does not allow for differing decisions as to the individual members of the group. Also, if rights or duties of multiple parties stem from similar circumstances or legal grounds, Swiss law allows for such multiple parties to lodge their claims jointly. However, and in contrast to a mandatory joinder of parties set up, the joint action is made available as an option rather than as a mandatory requirement ('simple [or voluntary] joinder of parties').

Depending on whether or not the plaintiffs are required by law to proceed together, the effect of the plaintiffs' legal actions on the other joint parties varies. In the case of a mandatory joinder of parties, all procedural measures taken by one of the parties are, as a rule, effective for all other joint parties. Furthermore, if in the case of a mandatory joinder of parties not all parties are made part of the legal action, the plaintiffs or the defendants may lack standing, which will lead to the dismissal of a claim. In contrast, in the case of a voluntary joinder of parties, each of the joint parties may act independently, and a judgment rendered will only bind the parties having joined the proceedings as voluntary joint parties and the judgment may vary as to each individual of the joint parties.

As a further kind of group action, Swiss law permits associations and organisations of national or regional importance to file claims on behalf of their members, if their statutes authorise them to protect the interests of their members, which is predominantly limited to remedial action for violations of their members' personality rights. Actions seeking monetary relief are, however, excluded and need to be pursued individually by the person or persons concerned.

While the above reflects the current situation in Switzerland with respect to class actions, political efforts are under way to improve the tools for collective legal protection, in particular in the areas of consumer protection, personality rights and data protection. However, the Federal Council, Switzerland's executive branch, decided not to include a previously discussed Swiss-style class action in the new Financial Services Act, which would have facilitated investors' access to courts in financial matters. Instead, the Federal Council indicated that the introduction of general group settlement proceedings, as well as the extension of the above-mentioned group action, will be suggested as part of future revisions of the CCP in the coming years.

iv Representation in proceedings

As a rule, a representation in proceedings is always permitted in Switzerland. Exceptions to this rule may apply in conciliatory hearings and certain family law proceedings where the parties must appear in person. That said, Swiss law does not require a party to be represented in court proceedings, unless such a party is deemed incapable of acting in the proceedings in which case the court will require such a party to arrange for legal representation.

Other than in civil and criminal matters before the Swiss Federal Tribunal, legal representation of a party in court proceedings needs not be, but ordinarily is, taken over by a lawyer. However, a person wishing to professionally represent parties in court proceedings must be qualified to practise in Switzerland.

Apart from the duty to protect their clients' interests and their duty of care, Swiss attorneys are subject to confidentiality and professional secrecy obligations, a violation of which constitutes a criminal law offence.

v Service out of the jurisdiction

Summonses, orders and decisions from Swiss courts are served to parties domiciled in Switzerland by registered mail or by other means against confirmation of receipt.

Barring any bilateral or multilateral agreement ratified by Switzerland providing otherwise, service of court documents out of Switzerland must occur by way of judicial assistance only.

Apart from bilateral agreements, Switzerland is party to two international treaties on this matter. Switzerland is a signatory state of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters of 15 November 1965, pursuant to which service of legal documents occurs via a central authority appointed in each Member State, which in Switzerland is the responsibility of the respective cantonal high courts. The legality of service is then assessed based on the law of the jurisdiction where service is effected.

Furthermore, Switzerland is party to the Hague Convention on Civil Procedure of 1 March 1954, pursuant to which a foreign court wishing to serve documents out of the jurisdiction must use diplomatic channels (i.e., the documents must be served to the consular representation in Switzerland, which then approaches the Swiss Federal Department of Justice to ensure service on the party domiciled in Switzerland). Complaints to foreign courts against persons domiciled in Switzerland must also be translated into one of the official languages of Switzerland.

A Swiss court may require a party domiciled abroad to appoint a process agent in Switzerland for the purposes of civil proceedings. If the foreign party fails to do so, service may be effected by the court by way of public announcement, generally by way of publication in the cantonal official gazette.

vi Enforcement of foreign judgments

Barring any bilateral or multilateral agreement that may apply, the general rules regarding the enforcement of foreign judgments in Switzerland are regulated in the PILA. To enforce a foreign judgment under the PILA, a party must submit to the enforcing court a complete and authenticated copy of the decision; a confirmation that no further ordinary appeal is available against the decision; and in the case of a default judgment, official documentation evidencing that the defendant has been duly summoned and has been given the chance to enter a defence.

For a foreign judgment to be recognised under the PILA, the party seeking enforcement must, in particular, demonstrate the competence of the foreign court having rendered the decision. The party objecting to the recognition and enforcement is entitled to a hearing and to adduce evidence. This notwithstanding, interim relief such as freezing orders or attachments are available in the enforcement proceedings for the party seeking recognition and enforcement to protect its legitimate interests.

With regard to European judgments, Switzerland is a signatory state of the Lugano Convention, whose provisions apply to the recognition and enforcement of judgments in civil and commercial matters rendered in another signatory state of the Lugano Convention.

Compared with the enforcement regime foreseen by the PILA, the Lugano Convention provides facilitations both in terms of the conditions for recognition and enforcement and in terms of the applicable procedure. As regards the conditions to be met for recognition and enforcement of a foreign judgment, under the Lugano Convention the enforcing court is, in particular, not permitted to verify whether the foreign court, having rendered the decision, was competent to do so in the first place. A party seeking to enforce a foreign judgment must provide the court with the original or an authenticated copy of the judgment and a certificate rendered in accordance with the provision of the Lugano Convention confirming the enforceability of the decision. Notably, no evidence as to due process standards having been met must be adduced. In addition, provisional measures issued by a signatory state of the Lugano Convention (other than *ex parte* decisions) may be enforceable in Switzerland (in contrast to provisional measures issued by another state, which pursuant to the PILA are not enforceable in Switzerland). In terms of procedure, the enforcing court must decide on the enforcement request in an *ex parte* procedure (i.e., without hearing the party against which enforcement is sought). The latter will only be heard in the appeals stage should it appeal the *ex parte* enforcement decision.

vii Civil assistance to foreign courts

In recent years, assistance to foreign courts has shifted more and more into public view, not least because of certain attempts of foreign courts to order parties domiciled in Switzerland to directly collect and surrender information and documentation to the foreign court other than via the official channels foreseen by international law.

In Switzerland, it may be a criminal offence pursuant to Articles 271 (unlawful activities on behalf of a foreign state) and 273 (industrial espionage) of the Swiss Criminal Code – and possibly also a violation of further obligations relating to professional secrecy and data protection laws – to collect or surrender (or assist in doing so) information and documentation to a foreign court pursuant to a foreign order not effected via the requisite judicial assistance channels as foreseen by international law. Thus, compliance by a party with such a foreign court order (or for that matter with any order of a foreign authority) may lead to criminal sanctions. Barring any bilateral or multilateral agreement to the contrary, any information, documentation or other kind of assistance pertaining to matters located within Switzerland that a foreign court may require must be obtained by way of judicial assistance only.

The service of documents from a foreign court into Switzerland and the taking of evidence by a foreign court in Switzerland must occur in line with international treaties ratified by Switzerland. In relation thereto, Switzerland has ratified the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial

Matters of 15 November 1965, the Hague Convention on Civil Procedure of 1 March 1954 and the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters of 18 March 1970.

Under the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters of 18 March 1970, the requesting state must transmit its request to the central authority of Switzerland (at cantonal level), which will forward such a request to the Swiss Federal Department of Justice and Police together with its recommendation about whether or not it supports such a request. However, the request may also be sent to the Swiss Federal Department of Justice and Police, which will then forward such request to the central authority (at cantonal level). The taking of evidence will be effected by the cantonal authorities at the domicile of the person. It is, however, noteworthy that Switzerland has made a reservation under this treaty as regards common law pretrial discovery of document requests.

The procedure for the taking of evidence required under the Hague Convention on Civil Procedure of 1 March 1954, while not identical, is fairly similar to the procedure required under the Hague Convention on the Taking of Evidence Abroad in Civil And Commercial Matters of 18 March 1970. Since the latter replaces the former, a requesting state being signatory to both treaties will have to submit its request under the procedure foreseen by the Hague Convention on the Taking of Evidence Abroad in Civil And Commercial Matters of 18 March 1970.

Generally speaking, the Swiss authorities have in recent years proven to be very amenable to judicial assistance requests from foreign authorities.

viii Access to court files

As a rule, civil law court proceedings in Switzerland are public. However, public interest in commercial cases is normally very limited. If the public interest or the protected interests of a person are directly affected, a court may exclude the public from proceedings. Since commercial disputes, in particular those with an international component, tend to be complex, the parties generally submit their pleas in writing. While written submissions in civil proceedings are not made available to the public, copies of judgments may be requested by anyone. In such cases the judgments are generally made available in anonymised form only. Additionally, many higher cantonal and federal courts have, in recent years, started to publish most of their judgments in anonymised form on their websites.

ix Litigation funding

Litigation in Switzerland is usually funded by the litigating party itself. Ordinarily, the prevailing party may recover its legal costs. However, depending on the canton where litigation is conducted, the cost amount that may be recovered does not equal the actual legal fees paid (the difference, depending on the canton, may be quite substantial).

If a party cannot afford the costs of the proceedings or legal representation in such proceedings, a party may apply for free proceedings and to be provided with legal representation, the costs of which will be covered by the state.

The funding of litigation by third parties is, in principle, admissible, albeit not very popular. Nevertheless, in a recent decision, the Swiss Federal Supreme Court confirmed said admissibility and even held that an attorney might have a duty to inform his or her client about the possibility of litigation funding. However, as with all contractual relationships, the contractual terms of a funding agreement must be in line with Swiss mores and must in

particular not constitute profiteering in accordance with Article 157 of the Swiss Criminal Code (sanctioning, *inter alia*, the exploitation of a person in need). Furthermore, the funding by a third party must not cause any conflict of interest on the level of the attorney–client relationship (i.e., notwithstanding any third-party funding, the lawyer must still be instructed by the litigating party and will owe its contractual duties (including its duty of care) in relation to the litigant only). The attorney, therefore, cannot at the same time represent the client and be an employee of such third party.

One should note that while the client and its attorney are generally free to agree on the remuneration for the legal services rendered, in contentious matters the professional rules of attorney conduct do not allow for pure contingency fees. In contentious matters, legal services are, therefore, generally charged on an hourly basis. It is, however, in principle admissible to agree on reduced hourly rates and provide for an additional success fee. The inadmissibility of pure contingency fee arrangements in litigation may be a major reason why litigation funding in Switzerland has not gained popularity thus far.

IV LEGAL PRACTICE

i Conflicts of interest

Pursuant to the FAFML Swiss attorneys are subject to a special fiduciary duty in relation to their clients, pursuant to which any real conflict of interest – as opposed to the mere appearance of a conflict of interest – must be avoided between the lawyer's clients and persons with whom the lawyer has private or professional contact. If a conflict of interest arises in the course of the provision of legal services, the attorney affected must, in principle, terminate its involvement. In certain instances, the professional rules of conduct even prohibit a lawyer from accepting a mandate in the first place.

Conflicts of interest may in particular arise in three instances:

a if an attorney has personal interests contradicting the client's interests;

b if an attorney represents two or more clients with contradicting interests; or

c if an attorney acts against a former client.

The latter case is particularly likely to cause a conflict of interest if the matter in relation to which the lawyer is to act against the former client concerns matters and knowledge the lawyer was exposed to during his or her past representation of the former client.

The obligation to avoid conflicts of interests applies equally to different attorneys of the same law firm. In this respect, the different attorneys of a law firm are regarded as one and the same lawyer.

In contentious matters, it is thus prohibited for different lawyers of the same firm to represent clients with conflicting interests, notwithstanding any Chinese walls that may be in place. In non-contentious matters, however, the representation of clients with conflicting interests is admissible if all parties involved consent. In practice, this can be observed for instance when a law firm represents multiple clients in auctions related to acquisitions or also when multiple clients (as creditors) are represented by one and the same law firm in bankruptcy proceedings.

A representation of several clients with aligned interests is admissible, be it in contentious or non-contentious matters.

ii Money laundering

For financial intermediaries, there are verification obligations as to the identity of the contracting counterparty, the ultimate beneficial owner and the reasons behind the commercial transactions such a contractual counterparty engages in pursuant to the Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector.[7] The same Act furthermore subjects financial intermediaries to reporting duties in relation to funds reasonably suspected to be linked to acts of a criminal organisation or money laundering; a crime sanctioned with imprisonment in excess of three years; funds at the disposal of a criminal organisation; or funds financing terrorism.

Lawyers are exempted from the above reporting duty to the extent that their activity is subject to professional secrecy, which will generally apply to legal advice; however, they are not exempt in relation to services as board directors or escrow agents (unless linked to the provision of legal services).

iii Data protection

The Swiss Data Protection Act (DPA) applies to and restricts the processing of personal data. Provided that it allows for identification, data relating to both private persons and legal entities ('data subjects') are covered by the term personal data.

Various general principles must always be adhered to when processing personal data. For instance, in some cases, the data subject must at least implicitly agree to such processing and therefore be informed or otherwise be aware of the data being collected and processed as well as of such activities' purpose. Any processing must ensure data accuracy, be made in good faith and not be excessive. In addition, adequate technical and organisational protection measures are required to prevent unauthorised access to the data.

Particular restrictions apply to the international transfer of personal data. A transfer from Switzerland to countries with a level of data protection that is deemed inadequate such as, for example, the United States, is only possible if criteria for one of the exceptions provided for in the DPA are met. An exception may include the specific consent of the data subject, the implementation of contractual clauses ensuring that data protection is safeguarded, overriding public interest, or the necessity with regard to the exercise or enforcement of legal claims before courts. Data transfers within the same group of companies (i.e., from a Swiss affiliate to a foreign affiliate) are correspondingly restricted in that they require implementation of specific data protection rules. EU countries are considered to have an adequate level of data protection, so disclosure is not further limited than data transferred within Switzerland.

Sensitive data (i.e., relating to religion, political views, health, race, criminal records, etc.) and personality profiles are also subject to enhanced legal protection under the DPA, which may, for example, include the requirement of an explicit consent to the collection and the processing where such consent is required and certain duties of registration with the Federal Data Protection and Information Commissioner (FDPIC).

A person whose data is processed in a way that unlawfully infringes its privacy can sue for correction or deletion of the data, prohibition of disclosure, and damages. Accordingly,

7 The Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector of 10 October 1997.

for most claims based on DPA breaches, civil judges are competent. There are, however, a few exceptional circumstances constituting criminal liability, such as failure to fulfil registration duties.

Many very helpful summaries, sample contracts and guidelines, including various topics like international data transfer, lists of countries with adequate and inadequate levels of data protection, processing of employee data, outsourcing of operations and pertaining personal data to service providers, etc. may be found on the FDPIC's website.[8]

V DOCUMENTS AND THE PROTECTION OF PRIVILEGE

i Privilege

Pursuant to Article 321 of the Swiss Criminal Code and Article 13 of the Federal Lawyer's Act any lawyer admitted to the Bar (or otherwise authorised by law to represent clients before the courts) and who works in independent practice is subject to a duty of professional secrecy. A lawyer subject to professional secrecy obligations may (or normally has to) invoke legal privilege when it comes to the giving of testimony or the production of documents falling within the scope of the professional secrecy obligations.

The scope of such secrecy obligations is rather broad and includes everything conveyed to a lawyer in connection with the (prospective) attorney–client relationship. Most notably, this also includes the attorney's own assessments, proposals, memoranda and information gathered, learned or which otherwise comes to his or her attention in the course of performing his or her mandate. While it is of no relevance from whom the lawyer learned the information, only information in the lawyer's possession as part of his or her core business is protected. This notably excludes any information a lawyer learns as a private person or in a non-legal capacity, such as business advice.

No protection is granted where the business aspects prevail over the legal aspects, such as in the case of a lawyer serving as a board member or asset manager.

Corporate in-house counsel are not subject to a duty of professional secrecy, since they are in particular thought to lack the 'independent practice' characteristics required for the applicability of the professional secrecy obligations pursuant to Article 321 of the Swiss Criminal Code. Consequently, to date no legal privilege applies to corporate in-house counsel.

From a procedural perspective, the CCP duly defers to the legal privilege of attorneys. Neither must lawyers' correspondence be produced in civil proceedings, irrespective of whether or not such correspondence is in the possession of the lawyer, the litigating party or any third party. Nor can a lawyer be compelled to testify, as he or she may legitimately invoke legal privilege, if the testimony would violate secrecy obligations under Article 321 of the Swiss Criminal Code. However, legal privilege may not be invoked as a blanket defence. Rather, it must be claimed for each specific piece of information in question and will be considered on a case-by-case basis.

ii Production of documents

Contrary to other – predominantly common law – jurisdictions, the CCP does, basically, not impose any obligations on the litigating parties in terms of pre-action conduct. Hence,

8 www.edoeb.admin.ch/datenschutz/index.html?lang=en.

litigating parties in Switzerland are not subject to a litigation hold. This should, however, not be misunderstood as permission to destroy evidence. Such conduct could result in adverse inferences by a court assessing the case. Moreover, the CCP provides for specific rules based on which a party may request the court to take evidence before initiating ordinary court proceedings (precautionary taking of evidence), in particular if such party shows that the evidence is at risk.

In state court litigation, a court may during the procedure order the parties of the dispute or third parties to produce documents and may even enforce such orders with coercive means. Refusal to obey a court's production order is only possible on the basis of a statutory refusal right (i.e., legal privilege, incrimination of a party of close proximity).

In practice, the production of documents in state court litigation has been shown to be of limited value. In particular, parties engaging in 'fishing expeditions' in an attempt to extract a wide array of unspecified or only very vaguely specified information will generally not be entertained by Swiss courts. Based on case law the documents to be produced must be described with sufficient specificity and their significance and appropriateness to prove factual allegations being in dispute must be shown. Furthermore, the information requested must be shown to be in the possession or under the control of the party to whom the production request is directed.

Given such rather stringent prerequisites, in practice it is not an easy task to obtain an order for the production of documents. A request for the production of documents will ordinarily require the requesting party to have concrete knowledge about the existence of a specific document (not necessarily, however, about its content), which in many instances proves to be the main obstacle for successful production requests.

If the type of information one seeks to obtain relates to own personal data or information connected therewith, the owner of such data may be able to obtain such data on the basis of data protection regulations. In international arbitration proceedings in Switzerland the standard adopted for the production of documents will generally be in line with the IBA Guidelines for the Taking of Evidence in International Arbitration.

VI ALTERNATIVES TO LITIGATION

i Overview of alternatives to litigation

In Switzerland arbitration is seen as the main alternative dispute resolution mechanism to ordinary state court litigation. Mediation proceedings have gained some popularity, but are yet to have a major practical impact.

ii Arbitration

Switzerland is seen as one of the traditional and most popular places for international arbitration proceedings. Thanks to the arbitration-friendly and very liberal approach adopted in Swiss legislation and the extensive court practice when it comes to international arbitration, Switzerland is one of the preferred countries for institutional arbitration proceedings conducted under the auspices of the International Chamber of Commerce.

The procedural rules – the lex arbitri – applicable to international arbitration proceedings seated in Switzerland are set out in the PILA (in particular Chapter 12). These rules together with the case law of the Swiss Federal Tribunal in particular ensure the following.

The rules contain a broad definition of what matters are deemed arbitrable. They extend to proprietary matters, which notably include proprietary matters pertaining to disputes in employment, antitrust and non-competition, family law, shareholder and real estate matters, as well as intellectual property law.

The procedural rules ensure a wide party discretion to agree on procedural rules to govern the arbitral proceedings, such a discretion being limited by the core principles pertaining to fair proceedings and public policy only.

The rules give protection from unwarranted interference by both domestic state courts and foreign courts. This supports the efficiency and independence of arbitration proceedings seated in Switzerland; on the one hand, Swiss legislation expressly excludes the application of rules on lis pendens to Swiss arbitration proceedings, as a result of which any parallel proceedings initiated outside Switzerland will not be able to interfere with Swiss arbitration proceedings. On the other hand, protection from unwarranted interference is also ensured by settled case law granting arbitral tribunals seated in Switzerland a preference over domestic state courts to review the validity of an arbitration agreement and thus the arbitral tribunal's competence to hear a case (also referred to as the negative effect of competence-competence).

Furthermore, the rules ensure a readily available support for arbitration proceedings by domestic state courts when it comes to the ordering of interim relief requested by arbitrating parties or when it comes to the enforcement of interim relief ordered by arbitral tribunals.

The rules provide a straightforward and rather expedient appeals procedure, where arbitral awards in international arbitration can be appealed to one instance only, the Swiss Federal Tribunal. The grounds for appeal are restricted to:

a the arbitral tribunal having been constituted improperly or an arbitrator lacking impartiality and independence;

b questions of jurisdiction;

c the arbitral tribunal deciding ultra or extra petita (i.e., beyond a matter, on a request not made by the parties, or failing to decide on a request made by the parties);

d matters pertaining to due process, the right to be heard and equal treatment; and

e grounds of public policy.

In hearing appeals, the Swiss Federal Tribunal has shown great reluctance to interfere with arbitral awards. Statistically, the chances of success vary from around 10 per cent for appeals relating to jurisdiction to around 7 per cent for appeals on all other grounds. In particular, since the entering into force of the PILA in 1989, only two awards have been set aside on the grounds of public policy; once because of a violation of the *res judicata* principle (formal public policy) and once in a case where a professional footballer was banned from football for life, *inter alia*, as a means to enforce a monetary debt owed to his former club (substantive public policy). Ordinarily, appeals decisions can be expected to be rendered within six to eight months from lodging the appeal.

In arbitration proceedings where all arbitrating parties are domiciled outside Switzerland, the parties are given the option to altogether waive the possibility of appeal to the Swiss Federal Tribunal. Parties may also replace the PILA and agree that the rules for domestic arbitration set forth in the CCP shall apply. In such a case, the grounds for appeal to the Swiss Federal Tribunal (unless the parties have agreed on a cantonal court to act as sole appeals instance in lieu of the Swiss Federal Tribunal) are slightly broadened and in particular include the arbitrariness of a decision, an apparent wrongful application of the law or a wrongful determination of the facts.

Most institutional arbitration proceedings seated in Switzerland are governed by the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution[9] and the Rules of Arbitration of the International Chambers of Commerce (ICC). In sports matters, the majority of arbitration proceedings are conducted under the rules of the CAS in Lausanne, while many intellectual property disputes are conducted under the arbitration rules of the WIPO in Geneva.

Compared to the extensive international arbitration practice, domestic arbitration in Switzerland is of less relevance. The procedural rules applicable to it are set forth in the CCP, while the parties are given the opportunity to opt out and choose their arbitral proceedings to be governed by the PILA instead.

iii Mediation

As already mentioned above, the CCP provides for a set of rules based on which the parties can opt for mediation instead of the often mandatory conciliatory hearing. Various institutions have issued mediation rules such as the Swiss Chamber of Commercial Mediation, the WIPO domiciled in Geneva and the CAS. Among other providers, the Swiss Chamber of Commercial Mediation also offers a wide variety of mediation courses and, hence, there is a considerable number of Swiss practitioners with special expertise in mediation techniques. In practice, mediation procedures are nevertheless of minor importance in Switzerland mainly because of the fact that Swiss counsel normally attempt to bilaterally settle a case (without the involvement of a mediator) before formal proceedings are initiated.

iv Other forms of alternative dispute resolution

Other forms of dispute resolution used in Switzerland are expert determinations, which are often contractually agreed; for instance with regard to purchase price determinations in M&A transactions or in relation to real estate matters. The local chambers of commerce or industry institutions readily offer their services to appoint experts in various fields of expertise if so desired by the parties.

Furthermore, within civil court proceedings the CCP permits the parties to agree on an expert report to determine certain disputed facts. In such a case the competent court is generally bound by the factual findings contained in the expert report, unless such findings prove to be incomplete, incomprehensible or incoherent.

VII OUTLOOK AND CONCLUSIONS

A partial revision of Chapter 12 of the PILA regulating international arbitration in Switzerland is in preparation with the objective of introducing selected improvements and updating certain provisions in line with the extensive case law developed by the Swiss Federal Tribunal since the PILA entered into force back in 1989. The consultation on the revised Chapter 12 of the PILA was concluded in May 2017. The final legislative proposal will be submitted to the Swiss parliament for approval.

A consultation on the complete revision of the DPA was initiated at the end of December 2016. The objective of such revision is to strengthen the protection of personal data, as well as to adapt Swiss data protection legislation to the revised Convention 108 for

9 www.swiss-arbitration.ch.

the Protection of Individuals with Regard to the Processing of Personal Data of the European Council and Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016. On 15 September 2017, the Swiss Federal Council approved the proposal concerning the complete revision of the DPA. The revised DPA is expected to enter into force in 2018.

In addition, after the completion of the consultation of the partial revision of the Federal Act on the Swiss Federal Tribunal in February 2016, the Swiss Federal Council mandated the Swiss Federal Department of Justice and Police in September 2017 to formulate the proposal concerning such partial revision. In a nutshell, the partial revision aims to strengthen the Swiss Federal Tribunal by expanding the possibility of admissible appeals to the Swiss Federal Tribunal in connection with disputes that relate to a legal issue of fundamental importance, while at the same time unburden the Swiss Federal Tribunal of less important cases.

Other than that, no major procedural changes in the field of state court litigation or arbitration are expected in Switzerland in the next few years. Benefiting from a long-standing, liberal free-market tradition, Swiss law continues to remain highly attractive as governing law for both Swiss-related and purely foreign business transactions. Because of the strong international nexus of Swiss law, Switzerland will continue to be a thriving jurisdiction and a central place for international arbitration on a worldwide scale.

Appendix 1

ABOUT THE AUTHORS

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Daniel Eisele is a partner in the dispute resolution team of Niederer Kraft & Frey. He has specialised in large and complex litigation and arbitration proceedings.

Having more than 20 years of professional experience, Daniel Eisele has represented clients in more than 250 arbitration, court and other proceedings. These procedures concern all types of industries, namely banking, finance, construction, oil, telecommunications, commerce and sports, and mostly relate to commercial contracts (e.g., purchase, work, delivery, production, licensing, construction, M&A, equity, marketing and television). He has special expertise in the field of sports.

Daniel Eisele has acted as counsel in many national and international proceedings conducted pursuant to the Swiss Rules, the ICC Rules or the TAS/CAS Rules. He has also been involved in civil, administrative and criminal proceedings in most cantons of Switzerland and has advised clients in many foreign procedures. He regularly represents clients before the Swiss Federal Court in Lausanne and before other Swiss federal courts and authorities.

Chambers Global and *Chambers Europe* both rank Daniel Eisele as a leading lawyer for litigation and arbitration counsel in Switzerland. They state that he is 'determined and target oriented'. *The Legal 500* ranks Daniel Eisele as one of eight leading litigation lawyers in Switzerland. Daniel Eisele won the Client Choice ILO Award in 2014, 2015, 2016 and 2018 for the litigation category in Switzerland.

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His practice covers a wide range of civil litigation with special emphasis on *ad hoc* and institutional commercial arbitration proceedings. Tamir is particularly well-versed in complex international arbitration disputes, where he has predominantly advised corporate clients from Europe, CIS countries and Asia. Tamir regularly represents clients in sports-related arbitration proceedings before the Court of Arbitration for Sport in Lausanne, Switzerland, and also sits as an arbitrator in ICC and DIS proceedings.

Recent practice includes, in particular, cases in the construction, commodity, real estate, sports, finance and pharmaceutical industries. *Chambers Global* and *Chambers Europe* both rank Tamir as a leading lawyer for dispute resolution in Switzerland. In addition, Tamir is listed as one out of three next generation litigation lawyers in Switzerland by *The Legal 500*.

Before joining Niederer Kraft & Frey, Tamir practised at one of the leading law firms in Tel Aviv, Israel. Tamir is fluent in six languages and is admitted to practise in Switzerland, Israel and in the state of New York. He has a master's degree in law from the New York University School of Law as well as an advanced professional certificate in law and business from the NYU Leonard N Stern School of Business.

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