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Client Alert

JANUARY 7, 2021

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Switzerland Updates its Arbitration Law

On 1 January 2021, the revision of the Swiss arbitration law came into force (the "Amended PILA"). Voted in June 2020 by the Swiss parliament, the amendment to the law that governs international arbitrations seated in Switzerland is an update that builds in welcomed clarifications and improvements. The new law makes arbitration in Switzerland more flexible and accessible and further strengthens Switzerland's position as one of the most attractive venues for hosting international arbitrations.

Over thirty years ago, in 1989, Switzerland was one of the first nations to adopt a truly modern law of international arbitration, which respects and emphasizes the principle of party autonomy. Since then, international arbitration has been regulated by a concise Chapter 12 of the Swiss Private International Law Act ("PILA"). The Amended PILA confirms and codifies the existing corpus of case law developed by the Swiss Tribunal Federal over the years and incorporates a few innovations that accommodates the needs of international business. The key features of the revision are the following:

- **The Swiss Federal Tribunal now accepts submissions in English.** Challenges against arbitral awards rendered in Switzerland continue to be decided directly by the country's highest court – the Swiss Federal Tribunal. Prior to 2021, parties had to file their submissions in one of Switzerland's four official languages (German, French, Italian or Romansh). Challenges against awards rendered after 1 January 2021 may now be presented in English. This is an important evolution that will further increase the efficiency of challenge proceedings before the Swiss Federal Tribunal. Arbitral awards rendered in Switzerland can be challenged on very limited grounds only and within a short 30-day deadline; the ability to file a challenge in English will help parties save time and translations costs. The Federal Tribunal will however issue its rulings in one of Switzerland's official languages.

- The Amended PILA applies if at least one party is domiciled outside of Switzerland at the time of the conclusion of the arbitration agreement.

Regardless of the situation when the arbitration is initiated, the execution of the arbitration clause is the relevant point in time for the application of the Amended PILA.

- **Lessening of the formal requirements governing the validity of an arbitration clause and strengthening of party autonomy.** The Amended PILA introduces the possibility of an arbitration clause contained in a unilateral legal instrument such as a trust, deed, will or articles of associations and bylaws (e.g., corporate of sport associations). While agreements by email have been recognized as a valid form of written arbitration clause for some time, the Amended PILA expands access to arbitration by clarifying that other forms of modern communications may be used to prove the existence of an arbitration agreement.
- **Waiver of procedural objections.** The Amended PILA codifies the longstanding Federal Tribunal's case law requiring parties to object timely to any apparent violation of the procedural rules. Failure to immediately object before the arbitral tribunal precludes the party from using this error later as a ground to challenge the award.
- **International judicial assistance.** From 1 January 2021, Swiss courts will provide judicial assistance to parties in arbitration proceedings seated abroad in connection with the taking of evidence and the enforcement of interim measures. Application to Swiss Court may come from a party directly without involving the arbitral tribunal.
- **Revision, correction, explanation, and completion of awards codified.** A list of all available remedies against international arbitral awards has been expressly included in the Amended PILA. It codifies the longstanding case law of the Federal Tribunal and includes applications for revision, correction of typographical, calculation and similar errors, explanation (of the operative part) or completion (e.g., the request of an additional award on claims that were left erroneously undecided by the arbitral tribunal). An application for revision of an arbitral award is a remedy of particularly serious consequences as it allows a reopening of the arbitral proceedings on the face of (i) previously undiscovered new material evidence, and (ii) evidence that the award was influenced by a crime or (iii) evidence not discovered during the arbitration despite proper diligence, that calls into question the independence or impartiality of an arbitrator. Revision is however subject to strict conditions and time limits.

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These few novelties, welcomed clarifications and modernization will no doubt allow Switzerland to remain at the forefront of international arbitration worldwide. Among others, the additional benefits of allowing written submission before the Federal Tribunal in English and of enhancing access to arbitration by adjusting and lessening formal requirements, are testimonies of the arbitration-friendliness of the country and the efficiency of arbitration proceedings carried out in Switzerland.

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