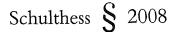
## International Arbitration in Switzerland

Prof. Dr. Daniel Girsberger, Attorney-at-law, LL.M.

PD Dr. Nathalie Voser, Attorney-at-law, LL.M.

with the assistance of Simone Fuchs, MLaw



## Table of contents

	Οv	ervi	ew	IX				
	Index of abbreviationsXXX							
	BibliographyXXXIII							
	Ge	ner	alXX	XШ				
	Sw	riss.		XV				
	Inc	lex	of legal sources	IVII				
	Inc	łex	of materials	XIX				
Ch	apt	er 1	: Introduction and Basic Principles	1				
A.	$\mathbf{Th}$	e co	oncept of arbitration	1				
	I.	$\mathbf{T}\mathbf{h}$	e fundamental features of arbitration and the main					
		dif	ferences from state court litigation	1				
		1.	Definition	1				
		2.	Arbitration as an alternative means of dispute resolution	1				
		3.	The arbitration agreement – foundation stone of every					
			arbitration					
		4.	The arbitral tribunal					
		5.	The parties choose the place/seat of the arbitration	4				
		6.	The arbitration procedure is determined and controlled					
			by the parties	5				
		7.	The arbitral tribunal renders a final, binding and					
			enforceable decision					
			Arbitrability					
			Summary					
			ernational commercial arbitration					
	III.		her forms of alternative dispute resolution					
		1.	What does alternative dispute resolution (ADR) mean?					
		2.	Mediation					
		3.	Conciliation					
		4.	Expert determination					
в.			of arbitration					
	I.	Ad	hoc arbitration vs. institutional arbitration	12				

		1.	Int	troductory comments12	
		2.	Ac	<i>l hoc</i> arbitration	5
			a)	Advantages13	i
			b)	Disadvantages14	
			c)	Proper drafting of the arbitration agreement in	
				ad hoc arbitration is crucial16	
		З.	Ins	stitutional arbitration17	
			a)	Advantages	
			b)	Disadvantages	
			c)	Choice of the arbitral institution	
			d)	Drafting the arbitration agreement in institutional	
				arbitration	
	II.	Nε	tio	nal arbitration vs. international arbitration22	
				roductory comments	
		2.		ernational arbitration23	
			a)	Focusing on the parties to the dispute23	
			b)	Focusing on the nature of the dispute	
				A combined approach	
		3.		mestic arbitration25	
		4.		ficulties arising out of and relevance of different	
				ncepts of "international" and "national"25	
C.	Ac			ges and disadvantages of arbitration27	
	I.			tages of arbitration27	
				portunity to choose the place of arbitration27	
		2.		portunity to choose the members of the arbitral	
		_		27	
				pitration leads to an enforceable arbitral award	
				xibility of arbitral proceedings	
				nfidentiality	
		6.		ne	
	п.			vantages of arbitration	
				sts	
				nited powers of arbitrators	
_	_			nflicting awards	
D.				y framework of arbitration34	
	I.	Int	rodı	uctory remarks	

II.	Re	gulatory framework of domestic arbitration	34
	1.	Different sets of rules for domestic and international	
		arbitration	34
	2.	The Concordat	35
	З.	Swiss Code on Civil Procedure	35
III	. Re	gulatory framework of international arbitration	35
	1.	Introductory comments	35
	2.	Supranational law	36
		a) The New York Convention	36
		b) The Geneva Protocol and the Geneva Convention	37
	3.	National law	37
		a) The lex arbitri	37
		b) Chapter 12 of the SPILA	38
		aa) General characteristics of Chapter 12	38
		bb) Conditions to application of Chapter 12	40
		c) The UNCITRAL Model Law	43
	4.	Non-national law: Rules as established by the parties	
		or chosen arbitration rules	44
		a) General remarks	44
		b) Ad hoc and institutional arbitration rules	44
		c) A few important and well-known institutional rules	45
		aa) ICC Rules	45
		bb) LCIA Rules	45
		cc) AAA Rules	45
		dd) Swiss Rules	46
		ee) Others	46
	5.	Best Practice standards	46

## 

I.	Ge	ene	ral/comparative law	54
	1.	In	troductory comments	54
	2.	Fc	orm of the arbitration agreement	55
	3.	Su	bstantive validity of the arbitration agreement	56
		a)	Consent to refer the dispute to arbitration	
			(essentialia negotii 1)	56
			aa) Interpretation of the parties' consent	56
			bb) Degree of certainty required	58
			cc) Pathological arbitration clauses	58
			dd) Arbitration clauses incorporated by reference	59
		b)	Designation of the legal relationship	
			(essentialia negotii 2)	59
		c)	Which parties are bound by the consent to arbitrate?	60
		d)	Subject-matter covered by the parties' consent	61
			aa) Introductory comments	61
			bb) Counterclaim	62
			cc) Set-off	63
			dd) Group of contracts	63
	4.	Ar	bitrability of the subject-matter of the dispute	64
	5.	Ca	pacity of the parties to enter into an arbitration	
		ag	reement	66
II.	Sw	riss	Law	66
	1.	Int	troductory comments	66
	2.		rm of the arbitration agreement	
		a)	General remarks	67
		b)	What is required under Art. 178(1) of the SPILA?	68
		c)	Special issues regarding the form of the arbitration	
			agreement	
		d)	Art. II(2) of the New York Convention	71
	3.		bstantive validity of the arbitration agreement	73
		a)	The principle of "favor validitatis" (Art. 178(2)	
			of the SPILA)	
			Scope of Art. 178(2) of the SPILA	74
		c)	Law governing the substantive validity of the	
			arbitration agreement	75

			aa)	Choice of a specific law by the parties to govern
				the arbitration agreement75
			bb)	The law applicable to the merits of the dispute
				<i>(lex causae)</i> 76
			cc)	Swiss law
			dd)	Domestic arbitration
		d)	Con	sent of the parties with regard to the essential
			eler	nents of the arbitration agreement (essentialia
			neg	otii)
			aa)	Consent to refer the dispute to arbitration
				(essentialia negotii 1)
			bb)	Designation of the legal relationship
				(essentialia negotii 2)82
	4.	Ar	bitra	bility of the subject-matter of the dispute83
		a)	Ger	neral remarks83
		b)	Spe	cial issues regarding arbitrability84
			aa)	Competition and anti-trust law
			bb)	Family and succession law matters85
			cc)	Intellectual property
				Non-enforceable claims
			ee)	Bankruptcy law86
	5.	Ca	paci	ity of the parties to enter into an arbitration
				nent
	6.			tive arbitration clauses under Swiss law
		a)	For	mal deficiencies87
				alidity due to defect in the conclusion of the
				itration agreement
		c)		ficiencies regarding content88
Cc	nte			arbitration agreement
I.				emarks
п.				f a properly drafted arbitration agreement
	1.			f arbitration
	2.			c or institutional arbitration
				osition of the arbitral tribunal
	4.			vable law
				age of the arbitration
				ment to exclude the right to challenge the award92
	ю.	Αģ	liee	ment to exclude the light to chancinge the award

C.

		7.	Pre	ovisions for multi-party proceedings
D.	Ef	fect	s of	the arbitration agreement
	I.	Ge	ene	al/comparative law93
		1.	Po	sitive effects
			a)	The parties' obligation to submit disputes to
				arbitration
			b)	Enforcement of the obligation to submit to
				arbitration
			c)	The arbitral tribunal has jurisdiction94
		2.	Ne	gative effect
	II.	Sv	viss	law
		1.	En	forcement of an obligation to submit to arbitration 96
		2.	$\mathbf{T}\mathbf{h}$	e plea of lack of jurisdiction97
E.	Te	rmi	nat	ion of the arbitration agreement
	I.	Ge	ener	al/comparative law
		1.	Int	roductory comments
		2.	Wa	ays and reasons for termination
			a)	Mutual consent to terminate the arbitration
				agreement
			b)	Waiver
			c)	Unilateral termination by one of the parties100
			d)	Purpose fulfilled by the rendering of a final award $\ldots$ . 101
			e)	Purpose becomes impossible
		3.	Eff	fects of the termination of the arbitration agreement 102
	II.	Sw	riss	law
		1.	Мı	utual consent to terminate the arbitration agreement 102
		2.	Un	ilateral termination by one of the parties
		3.	Pu	rpose becomes impossible or is fulfilled by the
			ma	king of a final award
		4.		rsonal relationship between the parties or personal
			qu	ality of one of the parties103
F.	Th	eor	y of	"separability"/"severability"104
	I.	Ge	ner	al/comparative law104
	II.	Sw	7iss	law
G.	Pri	nci	ple	of "competence-competence"106
	I.	Ge	ner	al/comparative law

1	1. C	enerally106
2		he positive and the negative effect of "competence- ompetence"106
3		ractical relevance of the principle of
		competence-competence"
4	4. C	ombined effect of "separability" and
	"	competence-competence"109
II. S	Swis	s law109
1	1. 0	enerally109
2	2. Т	he arbitral tribunal's ruling on its own jurisdiction111
3	3. J	urisdiction of the arbitral tribunal and the principle
	0	f lis pendens
	а	) Arbitration has been commenced prior to
		Swiss state court proceedings113
	b	) State court proceedings have been commenced
		prior to arbitration
	C	Arbitration has been commenced prior
		to the common concerns of emotion exhiting 114
		to the commencement of another arbitration114
ل خيش	إابصر	and his megalomania – Questions to Part I
ىلا خيش	ابصر	
Chapte	er 3:	and his megalomania – Questions to Part I115
Chapte بلا خيش	er 3: ¦ابصر	and his megalomania – Questions to Part I115 The Arbitral Tribunal
<b>Chapte</b> رلما خيش A. The	er 3: ابصر sea	and his megalomania – Questions to Part I115 The Arbitral Tribunal
<b>Chapte</b> رل خوش A. The I. (	er 3: ابصر sea Gen	and his megalomania – Questions to Part I
<b>Chapte</b> لىلا خوش A. The I. (1	er 3: ابصر sea Gen 1. I	and his megalomania – Questions to Part I
<b>Chapte</b> يل <i>خوش</i> A. The I. (1 2	er 3: ابصر sea Gen 1. I 2. I	and his megalomania – Questions to Part I
<b>Chapte</b> عالی خوش A. The I. (1 2 3	er 3: إبصر sea Gen 1. I 2. I 3. I	and his megalomania – Questions to Part I
<b>Chapte</b> ليانا <i>خو</i> ش A. The I. ( 2 2 2 2	er 3: ابصر Gen 1. I 2. I 3. I 4. I	and his megalomania – Questions to Part I
<b>Chapte</b> ل ا خيش A. The I. ( 2 2 3 4 4 11. 5	er 3: ابصر Gen 1. I 2. I 3. I 4. I	and his megalomania – Questions to Part I
<b>Chapte</b> ل ا خيش A. The I. ( 2 2 3 4 4 11. 5	er 3: ابابعر Gen 1. I 2. I 3. I 4. T 5wis 1. I	and his megalomania – Questions to Part I.       115         The Arbitral Tribunal       117         and his megalomania – Part II.       118         t of the arbitral tribunal.       119         eral/comparative law       119         refinition of the seat of the arbitral tribunal.       119         egal consequences of the seat of arbitration.       120         he transfer of the seat of arbitration       122         egal consequences of the seat of arbitration.       122
<b>Chapte</b> ل ا خيش A. The I. ( 2 2 3 4 4 11. 5	er 3: اباب مر Gen 1. I 2. I 3. I 3. I 4. T Swis 1. I a	and his megalomania – Questions to Part I.       115         The Arbitral Tribunal       117         and his megalomania – Part II.       118         t of the arbitral tribunal       119         eral/comparative law       119         refinition of the seat of the arbitral tribunal       119         egal consequences of the seat of arbitration       120         he transfer of the seat of arbitration       122         s law       122         egal consequences of the seat of arbitration       122         s law       122         egal consequences of the seat of arbitration       122         ) The seat determines the <i>lex arbitri</i> 122
<b>Chapte</b> ل ا خيش A. The I. ( 2 2 3 4 4 11. 5	er 3: (اب صر) (اب حر) (اب حر) (ال حر) (   - ) (   - (   - ) (   - ) ()) ()) ()) ()) ()) ()) ()) ()) ())	and his megalomania – Questions to Part I       115         The Arbitral Tribunal       117         and his megalomania – Part II       118         t of the arbitral tribunal       119         eral/comparative law       119         refinition of the seat of the arbitral tribunal       119         regal consequences of the seat of arbitration       119         resignation of the seat of arbitration       120         he transfer of the seat of arbitration       122         s law       122         egal consequences of the seat of arbitration       122         b transfer of the seat of arbitration       122         b transfer of the seat of arbitration       122         s law       122         of the seat determines the lex arbitri       122         ) The seat of arbitration and state court assistance       123
<b>Chapte</b> ل ا خيش A. The I. ( 2 2 3 4 4 11. 5	er 3: (اب صر) (اب حر) (اب حر) (ال حر) (   - ) (   - (   - ) (   - ) ()) ()) ()) ()) ()) ()) ()) ()) ())	and his megalomania – Questions to Part I
<b>Chapte</b> ل ا خيش A. The I. ( 2 2 3 4 4 11. 5	er 3: ۱۹۹۰ می Gen 1. I 2. I 3. I 4. I Swis 1. I 8 4. C	and his megalomania – Questions to Part I       115         The Arbitral Tribunal       117         and his megalomania – Part II       118         t of the arbitral tribunal       119         eral/comparative law       119         refinition of the seat of the arbitral tribunal       119         regal consequences of the seat of arbitration       119         resignation of the seat of arbitration       120         he transfer of the seat of arbitration       122         s law       122         egal consequences of the seat of arbitration       122         b transfer of the seat of arbitration       122         b transfer of the seat of arbitration       122         s law       122         of the seat determines the lex arbitri       122         ) The seat of arbitration and state court assistance       123
Chapte ل ا خيش A. The I. ( 2 2 4 2 11. 5	er 3: ابابعر Gen 1. I 2. I 3. I 4. T 5wis 1. I	and his megalomania – Questions to Part I.       115         The Arbitral Tribunal       117         and his megalomania – Part II.       118         t of the arbitral tribunal.       119         eral/comparative law       119         refinition of the seat of the arbitral tribunal.       119         egal consequences of the seat of arbitration.       120         he transfer of the seat of arbitration       122         egal consequences of the seat of arbitration.       122

		~	Designation of the seat of arbitration124
		2.	a) Designation of the seat of arbitration
			· •
			<ul> <li>b) Designation of the seat by an arbitral institution or by the arbitral tribunal</li></ul>
			aa) In general
			bb) Designation of the seat by an arbitral institution 126
			cc) Designation of the seat by an arbitral institution 127
		~	<i>cc)</i> Designation of the seat by the arbitral tribunal127 The transfer of the seat of the arbitral tribunal127
_	~		
В.			itution of the arbitral tribunal
	I.		eneral/comparative law
		1.	Introductory comments
		2.	
		3.	Qualifications of the arbitrator(s)
			a) Requirements imposed by the parties
			b) Independence and impartiality
		4.	Appointment of arbitrators
			a) Appointing mechanism136
			b) Multi-party arbitration and the constitution of the
			arbitral tribunal
			Administrative secretary139
	II.	Sw	<i>v</i> iss law
		1.	Number of arbitrators140
		2.	Qualifications of arbitrators
			a) Requirements imposed by the parties140
			b) Independence and impartiality141
		3.	Appointment of arbitrators
			a) Autonomy of the parties to agree on the
			appointment of arbitrators
			b) Appointment of arbitrators by an institution or a
			third person
			c) Appointment of arbitrators by a state court146
		4.	The right to appeal an appointment decision148
			a) Cantonal level148
			b) Federal level
			c) Appointment decisions issued by private
			institutions
		5.	Administrative secretary149

C.	Ch	alle	enging an arbitrator	
	I.	Ge	eneral/comparative law	150
		1.	Introductory comments	150
		2.	Grounds for challenge	150
		3.	Procedure	151
		4.	Limitations to the right to challenge an arbitrator	152
		5.	Replacement of the challenged arbitrator	153
	II.		viss law	
		1.	Grounds for challenge	
			a) Art. 180(1)(a) and (b) of the SPILA	
			b) Art. 180(1)(c) of the SPILA	
		2.	Procedure	
		3.	Limitations to the right to challenge an arbitrator	156
			Appeal against a challenge decision	157
D.			ssal, removal, resignation and replacement of an	
	arł		ator	
	I.	Ge	eneral/comparative law	159
		1.	Introductory comments	159
		2.	Dismissal of an arbitrator	
		З.	Removal of an arbitrator	160
		4.	Resignation of an arbitrator	161
		5.	Replacement of an arbitrator	161
			a) Procedure of replacement	
			b) Truncated arbitral tribunals	162
			c) Consequences of a replacement	164
	II.	Sw	riss law	165
		1.	Dismissal of an arbitrator	165
		2.	Removal of an arbitrator	166
		3.	Resignation of an arbitrator	167
		4.	Replacement of an arbitrator	168
			a) Procedure of replacement	168
			b) Suspension of the arbitral proceedings	169
			c) Consequences of a replacement	169
E.	Re	lati	onship between the arbitrators and the parties	170
	I.	Ge	neral/comparative law	170
		1.	The arbitral contract	170

	2.	Obligations and rights of an arbitrator	171
		a) The obligation to settle the dispute between the	
		parties	
		b) The obligation to complete the mandate	171
		c) The obligation to remain independent and impartial	
		and the obligation to disclose possible conflicts of	
		interest	
		d) The duty of confidentiality	
		e) The arbitrator's civil liability	173
		f) The arbitrator's fees	173
	3.	Beginning and end of the legal relationship between	
		the arbitrators and the parties	174
п.	Sv	viss law	175
	1.	The arbitral contract	175
	2.	Obligations and rights of an arbitrator	176
	3.	Beginning and end of the legal relationship between	
		the arbitrators and the parties	176
ا خيش	صل	and his megalomania – Questions to Part II	177
Chan	ter	4: The Arbitral Procedure	179
Chapt	ter	4: The Arbitral Procedure	179
		<b>4: The Arbitral Procedure</b>	
ا خيش	صل		180
ا خيش	صل mn	and his megalomania – Part III	180 181
ا خيش A. Co	صل mn	اب and his megalomania – Part III nencement of arbitration proceedings eneral/comparative law	180 181 181
ا خيش A. Co	صل mn Ge	and his megalomania – Part III nencement of arbitration proceedings eneral/comparative law Introductory comments	180 181 181
ا خيش A. Co	صل omn Ge 1.	اب and his megalomania – Part III nencement of arbitration proceedings eneral/comparative law	180 181 181 181 181
ا خيش A. Co	صل omn Ge 1.	and his megalomania – Part III nencement of arbitration proceedings eneral/comparative law Introductory comments Legal consequences of commencement of arbitral	180 181 181 181 181
ا خيش A. Co	صل mn Ge 1. 2.	c and his megalomania – Part III nencement of arbitration proceedings eneral/comparative law Introductory comments Legal consequences of commencement of arbitral proceedings Date of commencement	180 181 181 181 181 181
ا خيش A. Cc I.	صل mn Ge 1. 2. 3. 4.	and his megalomania – Part III nencement of arbitration proceedings eneral/comparative law Introductory comments Legal consequences of commencement of arbitral proceedings Date of commencement.	180 181 181 181 181 181 182 183
ا خيش A. Cc I.	صرل pmn Ge 1. 2. 3. 4. Sv	and his megalomania – Part III nencement of arbitration proceedings eneral/comparative law Introductory comments Legal consequences of commencement of arbitral proceedings Date of commencement. Initiating documents viss law.	180 181 181 181 181 182 182 183 185
ا خيش A. Cc I.	صل mn Ge 1. 2. 3. 4.	c and his megalomania – Part III nencement of arbitration proceedings eneral/comparative law Introductory comments Legal consequences of commencement of arbitral proceedings Date of commencement Initiating documents viss law Pendency of the arbitration proceedings	180 181 181 181 181 181 182 183 185
ا خيش A. Cc I.	صرل pmn Ge 1. 2. 3. 4. Sv	and his megalomania – Part III. nencement of arbitration proceedings. eneral/comparative law Introductory comments Legal consequences of commencement of arbitral proceedings. Date of commencement. Initiating documents viss law. Pendency of the arbitration proceedings a) Arbitrators named in the arbitration agreement.	180 181 181 181 181 182 183 185 185 185
ا خيش A. Cc I.	صرل pmn Ge 1. 2. 3. 4. Sv	and his megalomania – Part III. nencement of arbitration proceedings. eneral/comparative law Introductory comments. Legal consequences of commencement of arbitral proceedings. Date of commencement. Initiating documents. viss law. Pendency of the arbitration proceedings a) Arbitrators named in the arbitration agreement b) Arbitrators not named in the arbitration agreement	180 181 181 181 181 181 182 183 185 186 186
ا خيش A. Cc I.	صل omn Ge 1. 2. 3. 4. Sv 1.	and his megalomania – Part III nencement of arbitration proceedings eneral/comparative law Introductory comments Legal consequences of commencement of arbitral proceedings Date of commencement. Initiating documents viss law Pendency of the arbitration proceedings a) Arbitrators named in the arbitration agreement b) Arbitrators not named in the arbitration agreement c) Exact date of the pendency of the arbitration	180 181 181 181 181 181 182 183 185 186 186
ا خيش A. Cc I.	صرل pmn Ge 1. 2. 3. 4. Sv	and his megalomania – Part III. nencement of arbitration proceedings. eneral/comparative law Introductory comments. Legal consequences of commencement of arbitral proceedings. Date of commencement. Initiating documents. viss law. Pendency of the arbitration proceedings a) Arbitrators named in the arbitration agreement b) Arbitrators not named in the arbitration agreement	180 181 181 181 182 183 183 185 185 186 186

			a) Inadmissibility of other proceedings	.187
			b) Compliance with deadlines under Swiss law	.190
в.	De	ter	mining the arbitral procedure	.190
	I.	Ge	eneral/comparative law	.190
		1.	The parties' freedom to agree on the procedure	.190
		2.	The arbitral tribunal's power to determine the proce-	
			dure in the absence of an agreement by the parties	.192
		3.	Limitations to the procedure adopted: Compliance	
			with the parties' right of equal treatment and their	
			right to be heard	
			a) General	
			b) Right to equal treatment	
			c) Right to be heard	
	II.	Sv	viss law	
		1.	F	.195
		2.	The arbitral tribunal's power to determine the proce-	
			dure in the absence of an agreement of the parties	196
		3.	Limitations to the procedure adopted: Compliance	
			with the parties' right to be heard and their right to	107
			equal treatment	
			a) Right to be heard	
a	0		b) Right to equal treatment nization of the arbitral procedure	
U.	I.	-	eneral/comparative law	
	1.	Ge 1	· · · · · · · ·	
		1. 2.	-	
		3. 4.		
		5.		
		6.		
		7.		
		8.		
		9.	Deposit of costs	
			J. Procedural timetable 1. Selected issues	
	**			
	ш.		wiss law	
		1.	Procedural rules established by the arbitral tribunal	207

		2.	Selected issues	207
D.	W	ritte	en submissions	207
	I.	Ge	eneral/comparative law	207
		1.	Introductory comments	207
		2.	Exchange of written submissions	208
		3.	Content of written submissions	209
	п.	S۳	riss law	210
E.	Ta	king	g of evidence	210
	I.	Ge	eneral/comparative law	210
		1.	Introductory comments	210
		2.	Determination of the rules relating to the taking of	
			evidence	
		3.	Admissibility and probative value	212
		4.	The burden of proof	
		5.	Evidentiary means	213
			a) Production of documents	214
			b) Witness testimony	216
			c) Expert witness testimony	218
			aa) Party-appointed experts	219
			bb) Tribunal-appointed experts	220
			d) Inspection of the subject-matter of the dispute	221
		6.	Assistance of state courts in relation to the taking of	
			evidence	
	II.		riss law	
		1.	Introductory comments	
		3.	<b></b>	
		4.		
			a) Documentary evidence	
			b) Witness testimony	
		_	c) Expert witness testimony	
-	<b>TT</b>		Assistance of the "juge d'appui"	
F.			ngs	
	I.		neral/comparative law	
		1.	Introductory comments	
		Ζ.	Organization of hearings	228

		3.	Ex	parte hearings and default awards	229		
		4.	Pro	cedure after the hearing	230		
	П.	. Swiss law					
G.	Int	erir	n m	easures	231		
	I.	General/comparative law					
		1.	Int	roductory comments	231		
		2.	Jui	risdiction of the arbitral tribunal to order interim			
			me	asures	231		
		3.	Jur	risdiction of the state courts to order interim measure	s233		
		4.		lationship between the state court's jurisdiction			
				d the jurisdiction of the arbitral tribunal			
		5.		nditions for ordering interim measures			
				Generally			
				Ex parte measures			
		6.	Co	ntent of interim measures	238		
		7.		rm of orders for interim measures			
		8.	En	forcement of interim measures	240		
			a)	Penalties for non-compliance with interim measure			
				ordered by the arbitral tribunal	241		
			b)	National laws providing for state court assistance			
				in enforcing interim measures			
				ability for unjustified measures			
	II.	Sv		law	243		
		1.		risdiction of the arbitral tribunal to order interim	040		
				easures			
		2.		risdiction of the state courts to order interim measure			
				Concurrent jurisdiction			
			b)	The risk of conflicts and the prohibition of using			
				parallel jurisdiction in the absence of any change	245		
		~	~	in the circumstances			
		3.		onditions for ordering interim measures			
		4.		ontent of interim measures			
		5.		forcement of interim measures			
				Generally			
			b)	Penalties for non-compliance with interim measure	15 0/10		
				ordered by the arbitral tribunal			

c) State court assistance pursuant to Art. 183(2) of the SPILA	248
<ul> <li>d) Further issues concerning the enforcement of decisions dealing with interim measures</li> </ul>	250
aa) Interim measures ordered by an arbitral	
tribunal	
bb) Interim measures ordered by state courts	
H. State court support for arbitration proceedings	
I. General/comparative law	
II. Swiss law	
and his megalomania – Questions to Part III	255
Chapter 5: The Law Applicable to the Merits of the Case	.257
and his megalomania – Part IV	.258
A. Choice of law by the parties	.259
I. General/comparative law	.259
1. Introductory comments	.259
2. Application of the conflict of laws rule of the <i>lex arbitri</i>	.259
3. Party autonomy as the most prominent and widely	
accepted international conflict of laws rule	.259
4. Choice of a national law	.261
5. Choice of transnational rules as governing law	.263
6. Timing of the choice of law by the parties	.266
7. Limitations on party autonomy regarding choice of law	
a) "Lois de police" or "lois d'application immédiate"	
b) International public policy	
II. Swiss law	
1. Introductory comments	
2. Party autonomy	
a) Generally	
b) Limitations on party autonomy regarding choice	200
of law	270
B. Determination of the applicable law by the arbitrators	
I. General/comparative law	
-	-/-

		-	
		appropriate	272
	2.	Specific arbitration conflict of laws rule provided for	
		-	
	4.	National law or non-national rules?	274
Π.			
	1.	Art. 187(1) of the SPILA	275
	2.	The closest-connection test	275
Pro	oof	of the applicable law	276
I.	Ge	neral/comparative law	276
п.	Sw	iss law	277
Ar	bitr	ation ex aequo et bono and amiable composition	278
I.	Ge	neral/comparative law	278
	1.	Arbitration ex aequo et bono	278
	2.	"Amiable composition"	279
II.	Sw	riss law	279
Sa	ncti	ons for violation of the rules regarding the applicable	
lav	N		280
I.	Ge	neral/comparative law	280
II.	Sw	iss law	280
چخ ار	بصر	and his megalomania – Questions to Part IV	281
ant	ter f	: The Award	283
p.		, 110 11, 110	
ا خې	يصر	and his megalomania – Part V	284
Ту	pes	of awards	285
I.	Ge	neral/comparative law	285
	1.	Introductory comments	285
	2.	Distinction between interim or preliminary awards and	
			285
	3.	Types of awards	286
		b) Partial (final) award	286
		d) Default award	
	Pro I. II. Ar I. Sa lav I. II. $s^{2} \log^{10}$	3. 4. II. Sw 1. 2. Proof G I. Ge II. Sw Arbitr I. Ge II. Sw Sancti law I. Sw Sancti law	by the lex arbitri itself

			e)	Award on agreed terms (consent award)	287
			f)	Additional award	
	II.	Sv	viss	law	
		1.	(Ft	ıll) final award	
		2.	Pa	rtial (final) award	
		3.	Int	erim or preliminary award	
		4.	De	fault award and award on agreed terms	
			•	nsent award)	
		5.	Ad	ditional award	
В	. M		0	f an award	
	I.	Ge	ener	al/comparative law	291
		1.	Th	e arbitrators' deliberations	
			-	Generally	
				Form of the deliberations	
			c)	Confidentiality of the deliberations and voting	
		2.		ting: Decisions by unanimity or majority	
		3.		fusal of an arbitrator to participate in the deliber	
				d/or voting	
		4.		ne-limits for the making of an award	
	**	5.		senting and concurring opinions	
	Ш.			law	
				rty autonomy	
		2.		e arbitrators' deliberations	
			•	Generally	
				Form of the deliberations	
		2		Confidentiality of the deliberations and voting	
		3. 4.		ting: Decisions by unanimity or majority	
		4.		lure of an arbitrator to participate in the deliberation of the de	
		5.		senting opinions	
		6.		posit of the award and certification by the arbitr	
				ounal	
C.	. Fo	rm,	con	tent and notification of the award	
	I.	Ge	ener	al/comparative law	
		1.	Wr	itten form requirement	
		2.	Typ	pical elements of the award	300

			a) Generally							
			b) Signature							
			c) Place and date							
			d) Reasoning							
		3.								
	II.	Sw	viss law							
		1.	Written form requirement	303						
		2.	Typical elements of the award	303						
			a) Signature	304						
			b) Date of the award							
			c) Reasoning							
		3.	Notification of the award							
D.			ction and interpretation of the award and rendering							
	of		additional award							
	I.		neral/comparative law							
		1.								
			Correction							
		3.								
		4.								
	II.	Sw	riss law							
		1.	Introductory comments							
		2.	Correction and interpretation							
		3.	Additional awards							
E. Confidentiality and publication of awards										
	I.		neral/comparative law							
			riss law							
F.	Ch		llenging an award							
	I.	Ge	neral/comparative law	311						
		1.	Introductory remarks	311						
		2.	Jurisdiction of the state court at the seat of arbitrat	ion311						
		3.	Time-limits	311						
		4.	Decisions which can be challenged							
		5.	Grounds for challenge	312						
		6.	Effects of a successful challenge							
		7.	Exclusion and waiver of the right to challenge							
			a) Exclusion	314						

			b)	Waiver	315
	11	[. S <sup>.</sup>	wis	s law	316
		1.	Jı	risdiction of the state court at the seat of arbitration	316
		2.	Ti	me-limit under Swiss law	317
		3.	Fo	ormal requirements of an application to challenge and	
			cc	ontent of such an application	317
		4.		o stay of enforcement of the challenged award, unless	
				herwise ordered by the Swiss Federal Tribunal	
				ecisions that can be challenged	
		6.	Ef	fects of a successful challenge	319
		7.		rounds for challenge pursuant to Art. 190(2) of the	
				PILA	
				Generally	320
			b)	Irregular constitution of the arbitral tribunal	
				(Art. 190(2)(a) of the SPILA)	320
			c)	Wrong ruling on jurisdiction (Art. 190[2][b] of the	
			-1)	SPILA)	321
			α)	Ultra, infra or extra petita (Art. 190(2)(c) of the SPILA)	000
			۵)	Violation of right to be heard and equal treatment	322
			0)	(Art. 190[2][d] of the SPILA)	200
				aa) Right to be heard	
				bb) Right to equal treatment.	
			f)	Violation of public policy (Art. 190[2][e] of the	024
				SPILA)	324
		8.	Ex	clusion of the right to challenge pursuant to Art. 192	
				the SPILA	326
				Introductory remarks	
				Requirements of a valid exclusion	
				Effects of a valid exclusion	
G.	Re	visi		of the award	
	I.			al/comparative law	
	II.			law	
		1.		express provision in Chapter 12 of the SPILA	
		2.	Gro	ounds for revision	.330
		3.		mpetent authority	
				visable decisions	

5.	Time-limits	
6.	Formal requirements relating to the application for	
	revision	
7.	Procedure	
8.	Consequences of a successful revision	
صلا خيش	and his megalomania – Questions to Part V	

## **Chapter 7: Recognition and Enforcement of Swiss and Foreign** I. III. Certificate of enforceability under Chapter 12 of the C. Recognition and enforcement of Swiss arbitral awards in D. Recognition and enforcement of foreign arbitral awards in Switzerland 345 Т 1. The New York Convention is limited to "arbitral awards" ....346 2. The New York Convention is limited to "foreign" arbitral awards......347 3. The New York Convention is not limited to awards on 4. The New York Convention is applicable to differences III. Enforcement of foreign monetary arbitral awards in

V. Formal requirements for the recognition and enforcement
under the New York Convention
VI. Grounds for refusing recognition and enforcement under
the New York Convention
1. Introductory comments350
2. Grounds which must be invoked by a party
a) Art. V(1)(a) of the New York Convention: Invalidity
of the arbitration agreement352
aa) Incapacity of a party to the arbitration
<i>agreement</i> 352
bb) Formal and substantive invalidity
cc) Discrepancy between the SPILA and the New York
Convention353
dd) Miscellaneous354
b) Art. V(1)(b) of the New York Convention: Violation
of due process
c) Art. V(1)(c) of the New York Convention: Award
dealing with a difference not contemplated or not
falling within the scope of the arbitration agreement356
d) Art. V(1)(d) of the New York Convention: Arbitral
tribunal not properly constituted or arbitral procedure
not in accordance with the arbitration agreement357
e) Art. V(1)(e) of the New York Convention: Award
not yet binding, set aside or suspended358
3. Grounds which the state court considers on its own
motion
a) Introductory remarks
b) Art. $V(2)(a)$ of the New York Convention: Lack of
arbitrability
c) Art. V(2)(b) of the New York Convention: Violation
of public policy
and his megalomania – Questions to Part VI
* .
Index