Chapter 25

SWITZERLAND

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I INTRODUCTION TO THE DISPUTE RESOLUTION FRAMEWORK

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

In certain specialised fields of law such as intellectual property, competition and antitrust law, claims against the 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 cases and proceedings are governed by the Federal Act on the Federal Patent Court.

The principle of double instance furthermore does not apply in arbitration matters, whether 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 the sole appeals instance. Similarly, in international arbitration proceedings

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2 Swiss Code of Civil Procedure of 19 December 2008.

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

the Swiss Federal 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 covid-19 pandemic has left its mark on Swiss civil procedural law. In particular, on 18 March 2020, the Swiss Federal Council enacted a legal moratorium or standstill on all time limits in debt enforcement proceedings as well as, more generally, civil and administrative proceedings, from 19 March 2020 until 19 April 2020. Accordingly, all debt enforcement proceedings were suspended during this period, and it was no longer possible to initiate debt enforcement proceedings against debtors.

Furthermore, on 20 April 2020, with a view to generally ensure the operation of the Swiss civil courts and the functioning of the justice system during the covid-19 pandemic, the Swiss Federal Council enacted a covid-19 ordinance enabling the civil courts to make use of audio and videoconferencing instead of the ordinary conduct of court hearings in person as stipulated in the CCP. The ordinance is scheduled to be in force until 31 December 2021.

Moreover, the Swiss Federal Tribunal has rendered a number of notable decisions in the past year. In the context of the covid-19 pandemic, however, prior to the entering into force of the aforementioned ordinance by the Swiss Federal Council on 20 April 2020, the Swiss Federal Tribunal held that a court may not order a hearing to be held via videoconference without the consent of both parties (see Section II.i). Furthermore, it decided that the conduct of a subcontractor, which was featured in a main contract, could not be understood in good faith as interference with the main contract. Hence, the Swiss Federal Tribunal concluded that a subcontractor is not bound by the arbitration agreement in the main contract (see Section II.ii). Moreover, the Federal Supreme Tribunal has addressed the difficult boundary between treaty abuse and legitimate nationality planning regarding investment protection treaties by defining the scope of applicability of the treaty at hand (see Section II.iii). Finally, the Swiss Federal Tribunal rendered a decision on the question of whether a set-off defence could be successfully raised at the enforcement stage (see Section II.iv).

i Requirement of parties' consent to conduct a hearing via videoconference

On 6 July 2020, in the middle of the covid-19 pandemic, and prior to the entering into force of the Swiss Federal Council's ordinance enabling civil courts to conduct hearings via telephone and videoconference of 20 April 2020, the Swiss Federal Tribunal decided that within the scope of the CCP a hearing in a civil procedure could only be held via videoconference if both parties agreed to such procedure.

In a case to be decided by the Swiss Federal Tribunal, the Commercial Court of Zurich summoned the parties upon the claimant's request for an oral hearing scheduled for 7 April 2020. Two weeks prior to the scheduled hearing, the Court informed the parties that the hearing was to take place via videoconference using the Zoom Cloud Meetings application, and asked both parties to install the application on their mobile phones and to notify the Court of their mobile phone numbers by 31 March 2020. Failure to do so would be deemed in default of the hearing. On 30 March 2020, the claimant notified the Court that it disagreed with the ordered procedure and requested that the hearing be cancelled and

postponed. The Court, however, denied the request on 6 April 2020, and summoned the claimant to the hearing once again. On 7 April 2020, the hearing was held by videoconference without, however, the claimant. Subsequently, the Court dismissed the claimant's claims.

The Commercial Court of Zurich justified its decision by arguing that the judiciary is required to continue to function during a serious pandemic emergency situation. The Court held that it could therefore rely on 'judicial legislation' and order the conducting of a hearing via videoconference in analogous application of Article 1 Paragraph 2 CCP and Article 52 CCP. In addition, it dismissed the claimant's objections on the basis of lack of data protection as, according to the data protection officer, the Zoom application could be used in a secure manner. Further, it found that the principle of publicity was sufficiently taken into account whenever accredited media representatives are offered the opportunity to attend a videoconference. Finally, the Court pointed out the difficulties in finding dates, which would make a postponement of unknown duration disproportionate in view of the principle of expeditiousness.

The Swiss Federal Tribunal rejected the considerations of the Zurich Commercial Court. It pointed out that the parties were entitled to a hearing in conformity with the law, unless the parties jointly waived such hearing (Article 233 CCP). Under the CCP, the main hearing is understood as an oral hearing with the physical presence of the summoned persons and the court members at the same location. Meanwhile, the Swiss Federal Tribunal found that a hearing by means of videoconferencing raises numerous legal and practical questions, especially if the parties, as in the present case, are to participate from their respective locations via their mobile phones: the principle of publicity of the proceedings (Article 54 CCP), the participants' personal rights, data protection and security as well as default law (if the videoconference does not take place or the technical connection is interrupted) are all at risk. In addition, provisions governing legal assistance apply if a party is abroad. The Swiss Federal Tribunal, however, did not address these points in detail, nor the claimant's security concerns regarding the Zoom application. The decisive point for the Swiss Federal Tribunal was that although the CCP governs the use of technical aids, it does not include any provision that could oblige a party to participate in a hearing conducted via videoconference. It held that judicial legislation could not anticipate such provision, and that the difficulties in finding a date or the principle of expeditiousness would not change such finding.

The Swiss Federal Tribunal concluded that the Commercial Court's violation of the CCP could not be justified by the covid-19 pandemic emergency either. Although there was a pertinent Swiss Federal Council Ordinance on Measures in Procedural Law, which allowed that hearings and the taking of evidence could be conducted via videoconference, it entered into force on 20 April 2020 and thus only after the hearing on 7 April 2020. Therefore, the Zurich Commercial Court's decision was set aside and the Swiss Federal Tribunal remanded the case in order to re-conduct the hearing in accordance with the law.

ii Extension of arbitration agreements to third parties by interference

On 13 November 2020, the Swiss Federal Tribunal granted an appeal against a partial final award of an ICC arbitral tribunal in which the arbitration agreement had been extended to the appellant as a non-signatory party to the main contract. The Swiss Federal Tribunal found that the appellant's conduct could not be understood in good faith as sufficient interference with the main contract and, accordingly, could not be interpreted as a declaration of consent by the appellant to the arbitration clause included therein.

The Swiss Federal Tribunal's decision pertained to ICC arbitration proceedings related to a contractual dispute between a Korean company (claimant) and several South Asian companies (respondents) in connection with the construction and the operation of a major power generation plant in Bangladesh. After the claimant had initiated ICC arbitration proceedings against the respondents, the respondents requested that the arbitral tribunal include the subcontractor (appellant) as a party in the arbitration proceedings. The subcontractor then contested the jurisdiction of the arbitral tribunal. However, the arbitral tribunal issued a partial award on jurisdiction confirming that the subcontractor was bound to the arbitration agreement as well. The subcontractor thereupon filed a complaint with the Swiss Federal Tribunal.

In its decision, the Swiss Federal Tribunal first noted that as per its settled case law an arbitration agreement may, under certain conditions, also bind non-signatories: namely, if a non-signatory intervenes in the execution of a contract featuring an arbitration agreement, such non-signatory may be deemed to have given its implied consent to the agreement and, therefore, be bound by it.

In this particular case, the subcontractor was featured in the main contract as the seller or supplier of a part of the work to be delivered by the claimant, and supplied the required engines for the work owed under the main contract. The Swiss Federal Tribunal held that for such reason, it was not unusual that representatives of the subcontractor had also been present at the first meeting between the contracting parties and that the warranty rules and payment terms of the supply contract between the claimant and the subcontractor had been coordinated with those of the main contract. By supplying a significant part of the work owed by the claimant, the subcontractor was naturally also involved in the execution of the main contract. The Swiss Federal Tribunal further held that, against this backdrop, it was not unusual for representatives of the appellant to attend a test of the diesel engines on site following the conclusion of the main contract. Nor was it uncommon that the subcontractor replaced various engine components at the plant since it was its task as a subcontractor to carry out warranty work directly on the end customer's premises.

In conclusion, the Swiss Federal Tribunal held the appellant's involvement in the supply of components of the main contract could not be understood or interpreted in good faith as consent to agree to the arbitration agreement, and the appellant's appeal against the arbitral tribunal's partial award on jurisdiction was granted.

iii Setting aside of an investment treaty arbitral award for the first time

In a landmark decision on 25 March 2020, the Swiss Federal Tribunal for the first time set aside an investment treaty arbitral award rendered by a tribunal established under the bilateral investment treaty between Spain and Venezuela of 1995 (BIT). It held that the arbitral tribunal wrongly declined its jurisdiction over the dispute between a US-based cleaning products group and Venezuela, having adopted an interpretation of the definition of protected investments under the BIT that was deemed too narrow.

The case at hand concerned the activities of a US-based cleaning products group in Venezuela where the group had been actively investing since 1990 through its Venezuelan subsidiary. The shares in the Venezuelan subsidiary had been held by a US group entity until 2011. In the course of a restructuring, the US-based cleaning products group incorporated a Spanish entity the shares of which had initially also been held by the US group entity.

Subsequently, the US group entity transferred the shares in the Venezuelan subsidiary to the newly incorporated Spanish entity as a contribution in kind. Accordingly, the Spanish entity became the owner of the shares in the Venezuelan subsidiary.

In 2015, the claimant initiated arbitral proceedings against the state of Venezuela under the BIT arguing that its rights as investor had been violated and claiming damages in the amount of US$185 million. After Venezuela raised a jurisdictional objection (on the basis of several grounds), the arbitral tribunal declined its jurisdiction *ratione materiae* as it considered the Spanish entity's holding of the shares in the Venezuelan subsidiary not to qualify as an investment protected under the BIT. The arbitral tribunal held that the BIT required an 'active investment act' on the part of the investor, that is, that the acquisition of the asset by the investor is the result of a transfer of value. The arbitral tribunal concluded that the contribution in kind of the shares of the Venezuelan subsidiary to the Spanish entity did not constitute a transfer of value as required under the BIT.

Following the arbitral tribunal's decision declining jurisdiction, the Spanish entity filed an appeal with the Swiss Federal Tribunal arguing that the arbitral tribunal had wrongly declined jurisdiction. In its decision, the Swiss Federal Tribunal considered that the seemingly formal interpretation by the arbitral tribunal of the term active investment act under the BIT in reality constituted a substantive review of the origin of the invested funds. The Swiss Federal Tribunal found that the decisive factor for the arbitral tribunal's decision was in fact its finding that the shares in the Venezuelan subsidiary had presumably been transferred to the Spanish entity for the purpose of claiming protection under the BIT, as Venezuela had not entered into an investment treaty with the US (treaty shopping).

Furthermore, the Swiss Federal Tribunal determined that – in contrast to other international investment treaties – the BIT featured a broad definition of the term investment and specifically did not provide for a provision to avoid an abusive use of the investment protection under the BIT (treaty shopping), even though such provisions are fairly common in international investment treaties. The Swiss Federal Tribunal deemed that the nationality of the person entitled to the investment was the only decisive factor for the applicability of the BIT and concluded that the arbitral tribunal had wrongly declined jurisdiction by falsely taking into account additional requirements that did not need to be fulfilled. However, the Swiss Federal Tribunal added that – even in the absence of provisions preventing treaty shopping – states that are parties to investment treaties are not required to tolerate abusive practices. It considered that the prohibition of abuse of rights was an internationally recognised principle and formed part of the Swiss public order.

While the Swiss Federal Tribunal set aside the award on the basis that the arbitral tribunal had wrongly declined jurisdiction *ratione personae*, it ordered that the arbitral tribunal, in a next step, needed to decide on the additional jurisdictional objections raised by Venezuela, in particular the lack of jurisdiction *ratione temporis* or by reason of treaty abuse. Consequently, the arbitral tribunal will be required to draw a line between legitimate nationality planning and illegitimate treaty shopping. The Swiss Federal Tribunal noted in this regard that if the acquisition of nationality takes place after the dispute arose, the question of a possible abuse of rights appears irrelevant, since the arbitral tribunal in such *ratione temporis* will declare itself incompetent. On the other hand, the protection under an investment treaty ought to be denied when the investor carries out an acquisition of nationality transaction at a time when the dispute giving rise to the arbitration procedure was foreseeable. This transaction must be considered, according to the rules of good faith, as having been carried out with a view to this dispute and therefore possibly rooted in an abuse

of right. The Swiss Federal Tribunal expressly refrained from establishing general criteria for the foreseeability of a dispute, leaving it to the arbitral tribunal to examine this question in the context of the jurisdictional objection of Venezuela of abuse of rights.

iv Set-off defence in enforcement proceedings

In a decision of 19 December 2019, the Swiss Federal Tribunal rendered a decision on the question of whether a set-off defence could be successfully raised in enforcement proceedings.

The underlying dispute concerned an employee, the chief financial officer of a Swiss entity, who, following the termination of the employment relationship, filed a lawsuit against its employer for, inter alia, the transfer of participation certificates. The first instance court ordered the employer to provide the employee with 6,291 registered participation certificates of the entity in return for the payment of 32,209.90 Swiss francs.

After failure to hand over the certificates to the employee, the employee initiated a summary enforcement proceeding with the competent district court. In response, the employer argued that the employee's claim for the transfer of the participation certificates had lapsed after the employer had exercised a call option and subsequently offset its claim for transfer against that of the employee's claim. However, the district court granted the enforcement request, and the subsequent appeal of the employer was dismissed by the cantonal appeal court.

In the proceeding before the Swiss Federal Tribunal, the employer criticised the cantonal court's decision in particular for not taking into account the employer's set-off defence in the enforcement proceeding. In this regard, the Swiss Federal Tribunal stated that in enforcement proceedings, substantive objections could only be raised if they are based on genuine novelties (Article 341 Paragraph 3 CCP). Delicate substantive questions or questions of discretion are not to be decided in the summary enforcement proceedings. In the present case, the set-off defence would have required a review of the entire claim arising from the call option, as the amount of the exercise price was disputed between the parties. The Swiss Federal Tribunal therefore held that it is not up to the enforcement court to decide on the disputed amount of the exercise price of an (undisputed) call option.

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 Private International Law Act (PILA)[4] 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.

4 Private International Law Act of 18 December 1987.

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 their 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 a 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 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 other things, 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 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 ordinary, simplified and summary proceedings. Claims must be submitted under an ordinary proceeding 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 a legal action in civil matters before state courts. In practice, the settlement rate for such conciliatory hearings can exceed 50 per cent. However, in particular if the value in dispute is high, conciliatory hearings only rarely lead to the settlement of a 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 it 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, 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. Finally, 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, 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. In addition, 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 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.

Although 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 coming years.

In March 2018, the Federal Council initiated a consultation process for the revision of the CCP and particularly suggested two major amendments with regard to collective legal protection aimed at facilitating actions for damages for large groups through the existing mechanism of group actions through associations or other organisations that protect collective interests as well as by introducing a new group settlement procedure. Although, as per the current legislation, associations and other organisations protecting collective interests may solely bring non-monetary actions, the suggested amendment proposes to also allow for reparatory actions, such as actions for damages and restitution of profits. In addition, the new settlement procedure proposed by the Federal Council allows for associations and organisations that protect collective interests to enter into settlement with a damaging party that, following the approval of such settlement by the competent court, will be declared binding for all injured persons. The legislative procedure was initiated by the Federal Council by means of these proposed amendments, and it is not yet foreseeable if and to what extent these proposals will ultimately be adopted. The amendment procedure of the CCP is expected to take several years.

iv Representation in proceedings

As a rule, 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 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 need 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. 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 a 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, is 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 its 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 provisions 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 a 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 request to the Swiss Federal Department of Justice and Police together with its recommendation about whether 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, although 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 or Commercial Matters of 18 March 1970.

Generally, 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. Although 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, the Swiss Federal Supreme Court has 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, a 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.

Although the client and his or her attorney are generally free to agree on the remuneration for 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 Freedom of Movement for Lawyers Act, 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 a 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 his or her 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: if an attorney has personal interests contradicting a client's interests; if an attorney represents two or more clients with contradicting interests; or if an attorney acts against a former client.

The last 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 interest 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 (see Section II.iv). 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, where a law firm represents multiple clients in auctions related to acquisitions or 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 this in contentious or non-contentious matters.

ii Money laundering

For financial intermediaries, there are verification obligations as to the identity of a contracting counterparty, the ultimate beneficial owner and the reasons behind commercial transactions such a contractual counterparty engages in pursuant to the Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector.[5] 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 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 a 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) 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 collection and processing where such consent is required as well as 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 his or her privacy can sue for correction or deletion of the data, prohibition of disclosure and damages.

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

Accordingly, 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.[6]

In practice, although not Swiss law, compliance with the GDPR in data protection matters will be important for Swiss-domiciled entities with a nexus to Europe.

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 must) 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 that otherwise comes to his or her attention in the course of performing his or her mandate. Although 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 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 his or her 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.

6 https://www.edoeb.admin.ch/edoeb/en/home/data-protection.html.

ii Production of documents

Contrary to other – predominantly common law – jurisdictions, the CCP does not, basically, impose any obligations on the litigating parties in terms of pre-action conduct. Hence, 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 a 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 deemed the main alternative dispute resolution mechanism to ordinary state court litigation. Mediation proceedings have gained some popularity, but have yet to have a major practical impact.

ii Arbitration

Switzerland is considered 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 wide party discretion to agree on procedural rules to govern arbitral proceedings, such 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, 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 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 sports-related 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 an 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[7] and the Rules of Arbitration of the International Chambers of Commerce. In sports matters, the majority of arbitration proceedings are conducted under the rules of the Court of Arbitration for Sport (CAS) in Lausanne, whereas many intellectual property disputes are conducted under the arbitration rules of the World Intellectual Property Organization (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; 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 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

The final draft bill of proposed revisions to Chapter 12 of the PILA regulating international arbitration was approved on 19 June 2020 and is expected to enter into force in 2021. The partial revision is directed at:

a implementing and converting into law the developments in international arbitration since the PILA entered into force in 1989 driven by the case law of the Swiss Federal Tribunal;

7 https://www.swissarbitration.org.

b strengthening the party autonomy; and
c making the provisions of Chapter 12 of the PILA more user-friendly.

The revised draft Chapter 12 of the PILA includes, inter alia, the possibility to make submissions to the Swiss Federal Tribunal in English and a modernisation of the form requirements providing that arbitration agreements are valid if made by any means of communication, which allow the arbitration agreement to be evidenced by a text. Furthermore, as arbitral tribunals are not vested with sovereign power, in the event that parties do not voluntarily comply with interim and provisional measures or the production of evidence ordered by a tribunal, the enforcement of such measures and orders requires the assistance of state courts. To facilitate and expedite such procedure, the revised Chapter 12 of the PILA grants arbitral tribunals and parties to arbitration proceedings outside Switzerland direct access to the Swiss state courts at the place where enforcement is sought.

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 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. In September 2018, the Swiss parliament took the decision to, in a first step, adapt certain data protection rules in criminal law to EU Directive 2016/680, which is part of the Schengen acquis. The parliament adopted the bill in January 2019, which entered into force on 1 March 2019. The second step concerns the complete revision of the DPA, which was finally adopted by the parliament in September 2020, three years after it had been submitted for parliamentary deliberation. The revised DPA features, inter alia, a revision of the territorial and personal scope of application, with the revised DPA no longer being applicable to data of legal persons, an extension of the definition of personal data requiring special protection, the information duties and data subjects' rights to the handing over and transmission of data. The revised DPA is not expected to enter into force before summer 2021.

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

DANIEL EISELE

Niederer Kraft Frey

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

Having more than 25 years of professional experience, Daniel Eisele has represented clients in more than 300 disputes involving parties and projects from more than 50 countries and on all five continents. 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.

Daniel Eisele won the 'Client Choice ILO Award' in 2014, 2015, 2016, 2018 and 2020 for the litigation category in Switzerland. In 2020, he was named 'Dispute Resolution Lawyer of the Year' for Switzerland by *Benchmark Litigation Europe* awards. *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 a 'Leading Individual' in Switzerland. *Benchmark Litigation Europe* considers him a 'Dispute Resolution Star.'

TAMIR LIVSCHITZ

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Tamir Livschitz is a partner in the dispute resolution team of Niederer Kraft Frey.

Tamir Livschitz is an expert in litigation and arbitration with a particular focus on cross-border disputes in the financial, commodities, construction and sports industries. Tamir has extensive experience representing clients in white-collar crime matters both in respect of internal investigations and in investigations conducted by Swiss and non-Swiss authorities. In addition, Tamir regularly advises clients in contractual matters and negotiations, in particular in connection with sale and purchase, distribution, agency, supply and manufacturing agreements in a variety of sectors as well as in sports-related matters.

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 four next-generation litigation lawyers in Switzerland by *The Legal 500,* and *Who's Who Legal: Arbitration* lists Tamir as a future leader in arbitration and litigation.

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.

ANJA VOGT

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Anja Vogt is a senior associate in the dispute resolution team of Niederer Kraft Frey. Anja's practice focuses on commercial litigation and arbitration as well as internal investigations. She regularly represents clients of various industry sectors in commercial litigation and arbitration proceedings as well as in administrative, criminal and other proceedings. Furthermore, Anja advises clients in the fields of contract, commercial and employment law. Anja has been recognised by *The Legal 500* as a rising star in arbitration.

Before joining Niederer Kraft Frey, Anja worked at a law firm in Zurich. She has also worked as a foreign associate in the London offices of a large US firm. She is a member of the Zurich, Swiss and International Bar Associations, as well as a member of the Swiss Arbitration Association and the International Association of Young Lawyers.

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