

Swiss Code of Civil Procedure (CCP) of 19 December 2008

(as in force from 1 January 2021)*

Excerpt from Part 1 General Provisions

Art. 61 Arbitration agreement

If parties have concluded an arbitration agreement with respect to an arbitrable dispute, a state court before which an action is brought shall decline its jurisdiction, unless:

- (a) the respondent has submitted to the procedure without reservation;
- (b) the court finds that the arbitration agreement is evidently invalid or incapable of being performed; or
- (c) the arbitral tribunal cannot be constituted for reasons for which the respondent in the arbitration is evidently responsible.

Part 3 Arbitration

Title 1 General provisions

Art. 353 Scope of application

- (1) The provisions of this Part shall apply to proceedings before arbitral tribunals with their seat in Switzerland, unless the provisions of Chapter 12 of the Private International Law Act of 18 December 1987 apply.
- (2) The parties may, either in the arbitration agreement or in a subsequent agreement, exclude the application of this Part and agree on the application of the provisions of Chapter 12 of the PILA. The exclusion shall meet the conditions as to form set out in Article 358.

Art. 354 Arbitrability

Any claim of which the parties can freely dispose may be the subject-matter of an arbitration.

Art. 355 Seat of the arbitration

- (1) The seat of the arbitration shall be determined by the parties or by an authority designated by them. If the seat is not determined, it shall be determined by the arbitral tribunal.
- (2) If neither the parties nor the authority designated by them nor the arbitral tribunal determine the seat, it shall be at the place of the state court that would have jurisdiction over the dispute in the absence of an arbitration agreement.
- (3) If several state courts have jurisdiction, the seat of the arbitration shall be at the place of the state court first seized pursuant to Article 356.
- (4) Unless the parties have agreed otherwise, the arbitral tribunal may hold hearings, take evidence and deliberate at any other place.

Art. 356 Jurisdiction of state courts

- (1) The Canton in which the arbitration is seated shall designate a higher civil court that shall have jurisdiction:
 - (a) to rule on challenges and requests for revision;
 - (b) to accept the deposit of the arbitral award and to certify its enforceability.
- (2) The Canton in which the arbitration is seated shall designate another court or a court sitting in a different composition as the sole judicial authority competent:
 - (a) to appoint, decide on challenges of, remove and replace arbitrators;
 - (b) to extend the mandate of the arbitral tribunal;
 - (c) to assist the arbitral tribunal with the performance of any procedural acts.
- (3) With the exception of paragraph 1(a), the competent state court shall decide in summary proceedings.

* Translation by ASA. Edited by Christopher Boog, Melissa Magliana and Noradèle Radjai.

Title 2 Arbitration agreement

Art. 357 Arbitration agreement

- (1) The arbitration agreement may relate to existing or future disputes arising out of a defined legal relationship.
- (2) The validity of the arbitration agreement cannot be contested on the grounds that the main contract may not be valid.

Art. 358 Form

- (1) As regards its form, the arbitration agreement shall be valid if made in writing or in any other manner that can be evidenced by text.
- (2) The provisions of this Part shall apply by analogy to arbitration clauses set out in a unilateral legal act or in articles of association.

Art. 359 Plea of lack of jurisdiction

- (1) If the validity, content or scope of the arbitration agreement or the constitution of the arbitral tribunal are disputed before the arbitral tribunal, the latter shall rule on such plea by means of an interim award or in the award on the merits.
- (2) Any plea of lack of jurisdiction must be raised prior to any defence on the merits.

Title 3 Constitution of the arbitral tribunal

Art. 360 Number of arbitrators

- (1) The parties are free to agree on the number of arbitrators. In the absence of such agreement, the arbitral tribunal shall be composed of three arbitrators.
- (2) Where the parties have agreed on an even number, it is presumed that an additional person shall be designated as president.

Art. 361 Appointment by the parties

- (1) The arbitrators shall be appointed in accordance with the parties' agreement.
- (2) In the absence of such agreement, each party shall appoint an equal number of arbitrators; the latter shall unanimously appoint the president.
- (3) Where the parties have agreed that the holder of a certain position should act as arbitrator, the person holding that position at the time of the declaration of acceptance shall be deemed to be appointed.
- (4) In matters arising from tenancy agreements relating to residential property, only the cantonal conciliation authority may be appointed as the arbitral tribunal.

Art. 362 Appointment by the state court

- (1) If the arbitration agreement does not designate an appointing authority or if the latter fails to appoint the arbitrators within a reasonable time, the state court competent pursuant to Article 356(2) shall make the appointment at the request of a party, if
 - (a) the parties are unable to agree on the sole arbitrator or the president;
 - (b) a party fails to appoint its arbitrator within 30 days of being summoned to do so;
 - (c) the arbitrators are unable to agree on a president within 30 days of their appointment.
- (2) In a multi-party arbitration, the state court competent pursuant to Article 356(2) may appoint all arbitrators.
- (3) If a state court is entrusted with the appointment, it shall make the appointment unless a summary examination shows that no arbitration agreement exists between the parties.

Art. 363 Disclosure

- (1) A person who has been requested to serve as arbitrator must promptly disclose any circumstances that may give rise to justifiable doubts as to his or her independence or impartiality.
- (2) This obligation shall persist for the duration of the proceedings.

Art. 364 Acceptance of mandate

- (1) The arbitrators shall confirm acceptance of their mandate.
- (2) The arbitral tribunal shall be deemed constituted only once all its members have declared their acceptance of the mandate.

Art. 365 Secretary

- (1) The arbitral tribunal may appoint a secretary.
- (2) Articles 363(1) and 367 to 369 apply by analogy.

Art. 366 Term of mandate

- (1) The parties may limit the term of the arbitral tribunal's mandate in the arbitration agreement or in a subsequent agreement.
- (2) The time limit within which the arbitral tribunal must render its award may be extended:
 - (a) upon agreement of the parties;
 - (b) upon a decision of the competent state court pursuant to Article 356(2) at the request of a party or the arbitral tribunal.

Title 4 Challenge, removal and replacement of arbitrators

Art. 367 Challenge of an arbitrator

- (1) An arbitrator may be challenged if:
 - (a) that arbitrator does not meet the qualifications agreed upon by the parties;
 - (b) a ground for challenge exists under the arbitration rules agreed upon by the parties; or
 - (c) there are justifiable doubts as to that arbitrator's independence or impartiality.
- (2) A party may challenge an arbitrator whom it has appointed or in whose appointment it has participated only for reasons of which, despite having exercised due diligence, it became aware of only after the appointment. The ground for challenge shall be promptly communicated to the arbitral tribunal and to the other party.

Art. 368 Challenge of the arbitral tribunal

- (1) A party may challenge the arbitral tribunal if the other party had a predominant influence on the appointment of its members. The challenge shall be promptly communicated to the arbitral tribunal and to the other party.
- (2) The new arbitral tribunal shall be constituted pursuant to the procedures set out in Articles 361 and 362.
- (3) The members of the challenged arbitral tribunal may be appointed anew.

Art. 369 Challenge procedure

- (1) The parties may freely agree on the challenge procedure.
- (2) If the arbitral proceedings are not yet concluded and unless the parties have agreed otherwise, the request for challenge shall be addressed, with reasons and in writing, to the challenged arbitrator and notified to the other arbitrators within 30 days of the requesting party becoming aware or exercising due diligence, ought to have become aware, of the ground for challenge.
- (3) The requesting party may, within 30 days of the submission of the request for challenge, challenge the arbitrator before the authority designated by the parties or, in the absence of such designation, before the competent state court pursuant to Article 356(2).
- (4) Unless the parties have agreed otherwise, during the challenge procedure the arbitral tribunal may proceed with the arbitration and render an award, with the participation of the challenged arbitrator.
- (5) Recourse against the decision on the challenge may only be sought together with the first arbitral award.

Art. 370 Removal

- (1) Any arbitrator may be removed by written agreement of the parties.
- (2) Unless the parties have agreed otherwise, if an arbitrator is unable to perform his or her duties within a reasonable time or with due diligence, a party may apply, with reasons and in writing, for the arbitrator's removal by the authority designated by the parties or, in the absence of such designation, by the competent state court pursuant to Article 356(2).
- (3) Any challenge of such a decision shall be subject to Article 369(5).

Art. 371 Replacement of an arbitrator

- (1) If an arbitrator is to be replaced, the same procedure shall apply as for his or her appointment, unless the parties have agreed or agree otherwise.
- (2) If the replacement cannot be effected in this way, the new arbitrator shall be appointed by the competent state court pursuant to Article 356(2), unless the arbitration agreement excludes this possibility or becomes inoperative upon the exit of an arbitrator from the arbitral tribunal.

- (3) If the parties cannot agree on which procedural steps, in which the replaced arbitrator participated, are to be repeated, the newly constituted arbitral tribunal shall decide.
- (4) The replacement procedure shall not suspend the time limit within which the arbitral tribunal must render its award.

Title 5 The arbitral procedure

Art. 372 Pendency

- (1) The arbitral proceedings shall be pending:
 - (a) from the time when a party seizes the arbitral tribunal designated in the arbitration agreement; or
 - (b) if the arbitration agreement fails to designate an arbitral tribunal: from the time when a party initiates the procedure for the constitution of the arbitral tribunal or the preceding conciliation procedure agreed upon by the parties.
- (2) If an action on the same subject matter between the same parties is pending before a state court and an arbitral tribunal, the authority seized second shall stay the proceedings until such time as the authority that was seized first has decided on its jurisdiction.

Art. 373 General rules of procedure

- (1) The parties may:
 - (a) determine the arbitral procedure directly;
 - (b) determine the procedure by reference to arbitration rules;
 - (c) submit the arbitral procedure to a procedural law of their choice.
- (2) If the parties have not determined the procedure, the arbitral tribunal shall determine it.
- (3) The president of the arbitral tribunal may decide on individual procedural matters alone, provided that the parties or other arbitrators have authorised him or her to do so.
- (4) The arbitral tribunal shall ensure equal treatment of the parties and their right to be heard in adversarial proceedings.
- (5) Each party may be represented by counsel.
- (6) Objections to violations of procedural rules must be immediately raised when they are known or, exercising due diligence, ought to have been known; otherwise, they may not subsequently be raised.

Art. 374 Provisional measures, security and damages

- (1) The state court or, unless the parties have agreed otherwise, the arbitral tribunal may at the request of a party order provisional measures, including measures for the preservation of evidence.
- (2) If the party concerned does not voluntarily comply with a measure ordered by the arbitral tribunal, the state court shall, at the request of the arbitral tribunal or a party, make the necessary orders; if a party makes the request, the consent of the arbitral tribunal must be obtained.
- (3) If there is a risk of damage to the other party, the arbitral tribunal or the state court may make the order of provisional measures conditional upon the provision of security.
- (4) The requesting party is liable for the damage arising from an unjustified provisional measure. However, the court may reduce, or completely exempt the requesting party from such liability where the requesting party proves that the request was made in good faith. The aggrieved party may assert the claim in the pending arbitral proceedings.
- (5) Any security provided shall be released if it is established that no action for damages will be brought; in case of uncertainty, the arbitral tribunal shall set a time limit for the action.

Art. 375 Taking of evidence and assistance by the state court

- (1) The arbitral tribunal shall conduct the taking of evidence itself.
- (2) If the taking of evidence or any other procedural step by the arbitral tribunal requires the assistance of the state judicial authorities, the arbitral tribunal may seek the assistance of the competent state court pursuant to Article 356(2). With the consent of the arbitral tribunal, this may also be done by a party.
- (3) The arbitrators may participate in the procedural steps of the state court and ask questions.

Art. 376 Multiple parties and claims, participation of third parties

- (1) An arbitration may be conducted by or against multiple parties, if:
 - (a) all parties are bound by the same or by several compatible arbitration agreements; and
 - (b) the claims brought are identical or have a factual connection.

(2) Factually connected claims between the same parties may be brought in the same arbitration if they are the subject of compatible arbitration agreements between the parties.

(3) The intervention of a third party and the joinder of a third party by way of a claim require an arbitration agreement between the third party and the parties to the dispute and necessitate the consent of the arbitral tribunal.

Art. 377 Set-off and counterclaims

(1) If a party raises a set-off defence, the arbitral tribunal may assess the defence regardless of whether the claim that is being set-off is covered by the arbitration agreement, or whether it is covered by another arbitration agreement or a forum-selection clause.

(2) A counterclaim is admissible if it concerns a dispute covered by a compatible arbitration agreement between the parties.

Art. 378 Advance on costs

(1) The arbitral tribunal may request an advance for the presumed costs of the proceedings and make the conduct of the proceedings dependent on the payment of such advance. Unless the parties have agreed otherwise, the arbitral tribunal shall determine the amount of each party's advance.

(2) If a party fails to pay the advance requested from it, the other party may advance the entire cost advance or forego the arbitration. If it foregoes the arbitration, it may initiate a new arbitration for the dispute or bring an action before the state court.

Art. 379 Security for costs

If the claimant appears to be insolvent, the arbitral tribunal may, at the request of the respondent, order the claimant to provide security for the respondent's presumed legal and other costs for the conduct of the arbitration within a specified time. Article 378(2) shall apply by analogy to the respondent.

Art. 380 Legal aid

Legal aid is excluded.

Title 6 Award

Art. 381 Applicable law

(1) The arbitral tribunal shall decide the dispute:

- (a) according to the rules of law chosen by the parties, or
- (b) ex aequo et bono if the parties have authorised the arbitral tribunal to do so.

(2) In the absence of such a choice or authorisation, the arbitral tribunal shall decide the dispute according to the law that a state court would apply.

Art. 382 Deliberations and votes

(1) All arbitrators shall participate in the deliberations and votes.

(2) If an arbitrator refuses to participate in a deliberation or vote, the other arbitrators may deliberate and decide without him or her, unless the parties have agreed otherwise.

(3) The arbitral tribunal shall make the arbitral award by a majority of votes of its members, unless the parties have agreed otherwise.

(4) If there is no majority of votes, the president shall make the arbitral award.

Art. 383 Interim and partial awards

Unless the parties have agreed otherwise, the arbitral tribunal may limit the proceedings to specific issues and claims.

Art. 384 Content of the award

(1) The arbitral award shall contain:

- (a) the composition of the arbitral tribunal;
- (b) an indication of the seat of the arbitration;
- (c) a designation of the parties and their counsel;
- (d) the parties' prayers for relief or, in the absence thereof, the issues to be decided;
- (e) unless waived by the parties: the findings of fact, the legal reasoning and any considerations ex aequo et bono, if applicable;

- (f) the dispositive part as to the merits of the case as well as the amount and the allocation of the costs of the arbitration and the costs for legal representation and assistance; and
 - (g) the date of the award.
- (2) The arbitral award shall be signed; the signature of the president is sufficient.

Art. 385 Settlement

If the parties settle the dispute during the arbitral proceedings, the arbitral tribunal shall, upon request, record the settlement in the form of an award.

Art. 386 Notification and deposit

- (1) An executed copy of the award shall be notified to each party.
- (2) Each party may at its own expense deposit a copy of the award with the competent state court pursuant to Article 356(1).
- (3) At the request of a party, that court shall issue a certificate of enforceability.

Art. 387 Effect of the award

As of its notification, the award has the effect of a final and enforceable court judgment.

Art. 388 Correction and interpretation of the award; supplemental award

- (1) Each party may request that the arbitral tribunal:
 - (a) correct any clerical or computational errors in the award;
 - (b) interpret certain parts of the award;
 - (c) issue a supplement to the award on claims which were raised in the arbitral proceedings but not dealt with in the award.
- (2) The request shall be submitted within 30 days of the discovery of the error or of the parts of the award requiring interpretation or supplement, but no later than within one year of the notification of the award.
- (3) The request does not suspend the time limits for recourse against the award. With respect to the corrected, interpreted or supplemented part of the award, the time limit for recourse shall start anew.

Title 7 Recourse

Chapter 1 Challenge

Art. 389 Challenge to the Federal Supreme Court

- (1) The award may be challenged before the Federal Supreme Court.
- (2) The procedure is governed by the provisions of the Federal Supreme Court Act of 17 June 2005, unless this Chapter provides otherwise.

Art. 390 Challenge to the cantonal court

- (1) The parties may agree by an explicit declaration in the arbitration agreement or in a subsequent agreement that the award may be challenged before the competent cantonal court pursuant to Article 356(1).
- (2) The procedure is governed by the provisions of Articles 319 to 327, unless this Chapter provides otherwise. The decision of the cantonal court shall be final.

Art. 391 Subsidiarity

The challenge shall be admissible only after exhaustion of any arbitral remedies agreed in the arbitration agreement.

Art. 392 Challengeable arbitral awards

Challengeable is:

- (a) every partial or final arbitral award;
- (b) an interim arbitral award on the grounds set forth in Article 393(a) and (b).

Art. 393 Grounds for challenge

An arbitral award can only be challenged on the grounds that:

- (a) the sole arbitrator was not properly appointed or the arbitral tribunal was not properly constituted;
- (b) the arbitral tribunal wrongly accepted or declined jurisdiction;

- (c) the arbitral tribunal decided claims which were not submitted to it or failed to decide claims submitted to it;
- (d) the principle of equal treatment of the parties or their right to be heard in adversarial proceedings was violated;
- (e) its result is arbitrary because it rests on factual findings that are evidently contrary to the record or on a evident violation of the law or equity;
- (f) the fees and expenses of the arbitrators as determined by the arbitral tribunal are evidently excessive.

Art. 394 Remand for correction or completion

After hearing the parties, the judicial authority for recourse may remand the award to the arbitral tribunal and fix a time limit for correction or completion.

Art. 395 Decision

- (1) If the arbitral award is not remanded to the arbitral tribunal or is not corrected or completed by the latter within the time limit set, the judicial authority for recourse shall rule on the challenge and, if it admits it, set the award aside.
- (2) If the award is set aside, the arbitral tribunal shall decide anew in accordance with the considerations in the decision that set the award aside. If it is no longer complete, Article 371 shall apply.
- (3) The setting aside of the award may be limited to specific parts of the award, provided that the other parts do not depend thereon.
- (4) If the award is challenged on the ground of evidently excessive fees and expenses, the judicial authority for recourse may decide on such fees and expenses itself.

Chapter 2 Revision

Art. 396 Grounds for revision

- (1) A party may request the revision of an arbitral award from the competent state court pursuant to Article 356(1) if:
 - (a) it subsequently discovers material facts or conclusive evidence which, despite having exercised due diligence, it was unable to invoke in the previous proceedings; facts and evidence which postdate the award are excluded;
 - (b) criminal proceedings have established that the award was influenced, to the detriment of the challenging party, by a crime or misdemeanour, even in the absence of any conviction; if criminal proceedings cannot be pursued, proof can be furnished by other means;
 - (c) it is alleged that the recognition or the withdrawal of a claim or an arbitral settlement is invalid;
 - (d) if, despite having exercised due diligence, a ground for challenge under Article 367(1)(c) was not discovered until after the conclusion of the arbitration and no other remedy is available.
- (2) Revision on the grounds of violation of the ECHR may be sought if:
 - (a) the European Court for Human Rights has rendered a final decision finding that the ECHR or its Protocols have been violated;
 - (b) compensation is not adequate to cure the consequences of the violation; and
 - (c) the revision is necessary to eliminate the violation.

Art. 397 Time limits

- (1) The request for revision must be filed within 90 days of the discovery of the ground for revision.
- (2) Except in the cases provided for by Article 396(1)(b), the right to request revision shall expire ten years from the date on which the award has come into force.

Art. 398 Procedure

The procedure is governed by Articles 330 and 331.

Art. 399 Remand to the arbitral tribunal

- (1) If the court grants the request for revision, it shall set the award aside and remand the case to the arbitral tribunal for a new decision.
- (2) If the arbitral tribunal is no longer complete, Article 371 shall apply.