

## CIVIL LITIGATION Switzerland

- 1. In what language(s) may court proceedings be conducted? What arrangements can be made for translation/interpreter services?**

Court languages are German, French or Italian, depending on where in Switzerland you are. Interpreter services can be obtained in any proceeding.

- 2. What types of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?**

Interim protective measures can be obtained in a summary proceeding. They require that plaintiff can show that it is likely that his claim or right is infringed or threatened and that this causes irreparable damage. After the order is granted, the plaintiff must continue the matter in an ordinary court action, the Court will set an (extendable) deadline to do so. A warning letter is not required.

- 3. What are the costs of civil and commercial proceedings? Who bears the costs?**

The Costs are fixed according litigation value and based on cantonal tariffs. The costs must be borne by the party that lost the case.

- 4. What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

The party who bears the burden of proof must specify documents and file them in Court. If they are not in the party's possession, a request of production by third parties or the counterparty can be filed. The Court decides after the parties have pleaded their case. Every documentary proof needs to be presented. Electronic disclosure is uncommon.

- 5. What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)? Can a witness be compelled to attend to give evidence?**

Witnesses are heard after the parties have pleaded their arguments. Deposition in advance is only possible if otherwise such proof is

threatened to be lost. Yes, witnesses must appear before court.

- 6. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e: may not be disclosed to the court)?**

Normally, the court suggests certain solutions, and the parties, represented by their lawyers, negotiate further. Sometimes, negotiations are continued outside court between the lawyers, the court stays the proceedings until a deadline for out of court negotiations is lapsed. Only very seldom, the parties negotiate further without lawyers. It is forbidden to use settlement correspondence labeled "without prejudice" or similar in court.

- 7. How can foreign judgments be enforced?**

Yes.

- 1. Are mediation clauses in commercial contracts binding and enforceable?**  
Yes, they are.
- 2. What is the procedure for mediation? Is it a popular method for resolving commercial disputes?**  
No. It is seldom successful.
- 3. Are arbitration clauses in commercial contracts binding and enforceable?**  
Yes.
- 4. What type of arbitration is commonly used for resolving commercial disputes: ad hoc arbitration or institutional arbitration?**  
I do not know statistics. It seems that institutional arbitration is more common.
- 5. Which arbitration institutes are most popular?**  
ICC, Swiss Rules, specific like the CAS Lausanne for sport, etc.
- 6. What influence can the parties have on the identity of the arbitrator(s)?**  
Selection by the party of one arbitrator in case of a three persons tribunal.
- 7. In what language is an arbitration proceedings conducted?**  
Can be chosen by the parties.
- 8. What types of pre-arbitration measures are available and what are their limitations?**  
Interim protective measures as stated above.
- 9. What are the costs of arbitration proceedings and who bears these costs?**  
Upon tariff. Costs are borne according the outcome, normally.
- 10. What are the basic rules of document disclosure in arbitration? Which documents do not require disclosure?**  
Depending on the procedural rules (see ICC for example).
- 11. What is the procedure for witness evidence in arbitration (namely, is it**

## **ARBITRATION**

**deposition based or witness examination or cross-examination)?**

Depending on the procedural rules.

Nomally, witness hearings take place after the parties pleading their case.

**12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e., may not be disclosed to the Arbitrator)?**

Same answer as above.

**13. Under what circumstances can an Arbitration Award be enforced, challenged or annulled?**

See New York Convention for international enforcement. Appeal of arbitral award to Swiss Federal Court of Justice possible, but cognition is very limited, successful only if breach of fundamental rights can be shown (right to be heard, competence, constitution of arbitral body, award based on obviously false facts or the like).