

ICC'S 2023 STATISTICS CONFIRM SWITZERLAND AS A PREMIER ARBITRATION JURISDICTION

The Dispute Resolution Statistics of the International Chamber of Commerce (ICC) always make for interesting reading. The ICC is one of the largest International Arbitration Institutions, therefore its statistics give a good indication of what is happening in that part of the arbitration ecosystem.

Switzerland as a leading centre for International Arbitration

Switzerland's position as a leading centre for International Arbitration and international business were confirmed once more by the ICC's 2023 Dispute Resolution Statistics¹:

- Switzerland as a whole was the third-most common country to host ICC arbitrations;
- Swiss law was the second-most common choice of law for the contracts which were submitted to the ICC – in the 2020 statistics², it was the third-most common choice of law;
- Swiss nationality was the third-most common nationality of the arbitrators – as it was in 2020.

These figures are very much in line with those in previous years, for example, the 2019 statistics³ and the 2017 statistics⁴.

They show that Swiss law and arbitration remain a very popular choice for parties in international business.

This is not new: a 2014 academic study⁵ on the choice of law for international contracts from concluded that "[...] *English and Swiss laws are, on average, three times more attractive to commercial parties than any other laws.*"

The substantial presence of Switzerland and of Swiss law in the context of international business may be surprising, given that Switzerland has a population of less than 9 million people and doesn't have any colonial heritage.

Basis of the popularity of Swiss arbitration:

The choice of Swiss law for international business can be explained by the fact that it is a neutral and codified legal system which allows the parties a very large degree of contractual autonomy, which is enforced. Swiss contract law has not incorporated EU law. Much importance is placed on the wording of a written contract, and how a reasonable person would interpret it. It is generally quite easy to understand and is available in several languages.

Switzerland's popularity as a seat for arbitrations (including ICC arbitrations) is largely due to:

- it having a very robust legal framework for arbitration;
- a long history as an arbitration-friendly jurisdiction. It is clear from the Supreme Court's abundant case law that it upholds and supports arbitration agreements;
- Swiss-based tribunals having wide powers, including the ability to seek assistance from State courts;
- it being home to several specialised arbitration fora and institutions, including the Court of Arbitration for Sport, and WIPO's arbitration centre for intellectual property disputes;

¹ <https://iccwbo.org/news-publications/news/icc-dispute-resolution-statistics-2023/>

² The ICC's 2020 Dispute Resolution Statistics are available at: <https://iccwbo.org/news-publications/arbitration-adr-rules-and-tools/icc-dispute-resolution-statistics-2020>

³ <https://www.icc-switzerland.ch/2019iccdsstatistics-august2020.pdf>

⁴ <https://iccwbo.org/news-publications/arbitration-adr-rules-and-tools/2017-icc-dispute-resolution-statistics/>

⁵ Gilles CUNIBERTI, The International Market for Contracts: The Most Attractive Contract Laws, Northwestern Journal of International Law & Business, volume 34, issue 3, spring 2014, at pages 455 and following (<https://orbilu.uni.lu/bitstream/10993/30216/1/The%20Most%20Attractive%20Contract%20Laws.pdf>)

- wide arbitration experience, it is estimated that over 1,000 international arbitrations are commenced in Switzerland every year.

What is the position on appealing Swiss awards?

Appeals against awards are heard directly by the Swiss Supreme Court. The grounds for appeal are essentially limited to breaches of due process.

The process is quick, appeal proceedings are usually decided within six months and on the basis of written submissions only.

Interestingly, submissions can now be filed in English, even though it is not an official language. The judgment, however, will be handed down in one of the official languages. This will often simplify things for counsel during the preparation of the appeal documents in light of the comparatively short deadline to file the appeal.

Conclusion

The robust legal framework, together with the popularity of Swiss law, ensure that Switzerland and Swiss law will continue to be a key player in the world of International Arbitration. HFW's Geneva office is often instructed for arbitrations which are seated in Switzerland or governed by Swiss law.

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