

The Revised Swiss International Arbitration Act – Key Changes and Developments

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The Swiss International Arbitration legislation, reflected in Chapter 12 of the Swiss Private International Law Act, has gone over three decades without amendment since its enactment in 1987. However, a revised version of the Act entered into force on January 1, 2021.

Absent express agreement, the revised Act applies exclusively to international arbitrations where, at the time of the conclusion of the arbitration agreement, at least one of the parties has its domicile or seat outside of Switzerland. While the key features of the existing Act remain largely intact, the revised Act is a welcome update that modernizes and clarifies the existing provisions. The revisions also incorporate and reflect the well-developed case law of the Swiss Federal Tribunal in the field of arbitration. Overall, the revised Act contributes to the continuing attractiveness of Switzerland as a leading seat for international arbitration proceedings.

This Alert Memorandum is intended (i) to provide an overview of the notable elements of the Swiss International Arbitration Act (1987) that remain unchanged as a result of the revisions as well as (ii) to identify various developments and trends in national arbitration law reforms in competing jurisdictions that were not incorporated in the revised Act despite their growing prominence. Finally, this Alert Memorandum (iii) highlights noteworthy new features of the revised Act with which even infrequent users of Swiss arbitration should become familiar.

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1. The Current Law

The Swiss International Arbitration Act entered into force on December 18, 1987 (the “**Swiss Arbitration Act**” or the “**Act**”) and is codified in Chapter 12 of the Swiss Private International Law Act (the “**PILA**”).¹ Unlike the laws of many competing jurisdictions, the Swiss Arbitration Act was not drafted based on the UNCITRAL Model Law in International Commercial Arbitration of 1985 (the “**Model Law**”).

With only 19 provisions, the original Act was considered one of the most concise and flexible national arbitration laws in the world. Due in large part to the Act, Switzerland has also perennially ranked among the most attractive and arbitration-friendly seats for international arbitration proceedings.

The fact that the Act remained unchanged for over 30 years is a testament to the law’s success in first positioning and then maintaining Switzerland as a leading arbitration jurisdiction, in the face of fierce competition and modernization from competing jurisdictions in recent years.

2. The Revised Swiss Arbitration Act

On June 19, 2020, Swiss Parliament approved modest revisions to the Swiss Arbitration Act, while continuing to abstain from considering adoption of the Model Law. These revisions formally entered into force on January 1, 2021.

The revised Swiss Arbitration Act has now been expanded to 24 provisions, though its conciseness and its key features remain largely unchanged. The revised Act aims to make the Swiss *lex arbitri* even more user-friendly by modernizing and clarifying the existing provisions including through incorporation of the Swiss Federal Tribunal’s relevant jurisprudence.²

Furthermore, the revised Act has rendered Chapter 12 of the PILA a stand-alone set of rules for international

arbitration by replacing the current references to provisions in the Swiss Civil Procedure Code (“**CPC**”) (which contains the rules for domestic arbitration proceedings) with a set of new provisions within the PILA itself.

3. Elements of the PILA Not Subject to Revision

At the outset, it is important to note that the revised Act has left untouched certain notable and unique elements of the original PILA.

First, the Swiss Federal Tribunal continues to be an immediate single instance for setting aside procedures. This one-instance approach has proven effective and reliable, including because the judges of the Swiss Federal Tribunal have developed a robust jurisprudence and are highly experienced in arbitration matters. Indeed, many consider this to be a principle advantage in promoting Switzerland as a leading seat for international arbitration, with other jurisdictions (e.g., Austria) seeking to replicate this model of single-instance concentration of competence and jurisdiction.

With the revised Act, and more generally, Switzerland has also retained its decentralized system with regard to the competence of the Swiss state courts. Unlike in other national judiciaries (e.g., France³), Switzerland elected to abstain from establishing a national *juge d’appui* (“judge acting in support of the arbitration”). This has never been viewed as necessary in Switzerland, including because most Swiss arbitrations are seated in larger cities such as Bern, Geneva, and Zurich, where the local Swiss state courts are experienced in arbitration matters.

Second, the PILA continues to be applicable in a variety of arbitral proceedings, including, *inter alia*, *ad hoc* and institutional arbitrations, commercial arbitrations, and investor treaty arbitrations. The Swiss Parliament consciously refrained from developing separate and specialized legal regimes catering to the

¹ An English translation of the original [Swiss Arbitration Act](#) is available on the website of the Swiss Chambers’ Arbitration Institution (“**SCAI**”). While an official English translation of the revised Act is yet to be published, this Alert relies on the [unofficial convenience translation](#) of the revised Act prepared by Daniel Girsberger, Philipp Habegger and Alexandra Johnson. The Swiss Arbitration Association (“**ASA**”) has also published an [unofficial translation](#) of the revised Act

edited by Christopher Boog, Melissa Magliana and Noradèle Radjai.

² The Swiss Federal Tribunal is the highest court of the Swiss Confederation.

³ In France the president of the *Paris Tribunal de Grande Instance* is competent to rule on motions relating to the appointment of arbitrators.

various categories of international arbitration proceedings.

With the revised Act, Switzerland also maintains its well-established bifurcated system for arbitration. The distinction between domestic and international arbitral proceedings, each with their own set of rules, ensures that the unique needs of both types of proceedings are respected. Chapter 12 of the PILA seeks to offer concise and flexible regulations to govern a broad array of international arbitrations, whereas the volume and specificity of regulations in the CPC provides parties to domestic arbitration with greater predictability of the proceedings.

Third, the new PILA continues to respect and reinforce the fundamental principle of party autonomy by seeking to regulate only as much as is necessary (and as little as possible). Indeed, this is one of the main factors distinguishing Swiss arbitration law from the arbitration laws of other competing jurisdictions, some of which have developed and enacted sweeping and comprehensive reforms which are far more prescriptive (and therefore less flexible) in nature (*e.g.*, in certain respects Germany).

4. Issues Remaining Unaddressed by the Revisions

Given the modest nature of the revised Act, certain trends seen in national arbitration laws reforms were ultimately not addressed by the Swiss Parliament through the revisions, despite the growing prominence of these developments in other leading national arbitration laws.

One of the most discussed and important issues in recent arbitration law reform has concerned the confidentiality of arbitral proceedings. Of course, there is no uniform rule of confidentiality in this respect. Rather, the rules regarding the extent to which confidentiality provisions should apply (and, if so, their scope) differ significantly from jurisdiction to jurisdiction. Many national arbitration laws are silent concerning

confidentiality,⁴ including Switzerland, while other jurisdictions address it in a fairly cursory or general manner,⁵ while still others provide for detailed confidentiality regimes.⁶

With the revised Act, the Swiss Parliament elected not to include specific confidentiality provisions, and thus to retain the status quo from the original Act. As a point of comparison, while France enacted reforms in 2011 which included a confidentiality provision only for domestic arbitration, this was not extended to international arbitration. At least with respect to international arbitration, Switzerland has generally elected to adopt the same approach.

Although confidentiality is still not expressly provided for in the PILA, parties which agree to a Swiss seat of arbitration and that the arbitration should be administered by SCAI do benefit from the confidentiality protections of Art. 44 of the Swiss Rules of International Arbitration (the “**Swiss Rules**”), unless otherwise agreed. This provision provides for broad, if not all encompassing, confidentiality protections in arbitral proceedings.⁷

In all other cases, including *ad hoc* arbitration seated in Switzerland not subject to the Swiss Rules, it is still incumbent upon the parties to separately agree on confidentiality by means of an express provision in the arbitration agreement or in the context of the determination of the applicable procedural law.

Since arbitration agreements act as independent contracts, they can produce effects only between the contracting parties (*inter partes*). Accordingly, third parties are, on the one hand, not bound by the arbitration agreement and on the other hand cannot rely thereon. Although both Swiss case law and legal doctrine have developed certain exceptions to this legal principle (*e.g.*, succession, assignment or other forms of transfer, third-party beneficiary contracts, valid representation, etc.), the Swiss Parliament elected not to expressly account for these reforms in the revised Act.

⁴ *E.g.*, Germany, Austria, the United States, England and Wales, Singapore, and Japan.

⁵ *E.g.*, China and Spain.

⁶ *E.g.*, Scotland, Australia, and Hong Kong.

⁷ The confidentiality obligation under Art. 44 of the Swiss Rules extends to all awards and all orders as well

as under certain circumstances all materials submitted by another party in the framework. It applies to the parties, the arbitrators, the tribunal-appointed experts, the secretary of the arbitral tribunal, the members of the board of directors of the SCAI, the members of the Court and the Secretariat, and the staff of the individual Chambers.

5. Noteworthy Revisions to the Swiss Arbitration Act

The most noteworthy changes and additions to the Act are summarized below:

a. Clarification to the Scope of Application of Chapter 12 of the PILA

Art. 176(1) of the PILA provides that Chapter 12 will apply if at least one of the parties to a dispute has its domicile or seat outside of Switzerland. For some time it was unclear if the decisive factor was whether the domicile or seat of the parties should be outside of Switzerland (i) at the time of the conclusion of the arbitration agreement or (ii) when the arbitration proceedings commenced.

In 2002, the Swiss Federal Tribunal ruled that the application of Chapter 12 turns on the domicile or seat of the parties at the time of commencement of the arbitration.⁸ This decision was (and remains) controversial, in particular with respect to its application to arbitration agreements between multiple parties. Two examples illustrate the uncertainty stemming from this decision.

In the first example, where there were three parties to an arbitration agreement, two Swiss and one non-Swiss, but only the two Swiss parties commenced arbitration, under the Swiss Federal Tribunal's decision, that arbitration would be considered domestic.

In the second example, where an arbitration agreement was entered into exclusively between Swiss domiciled parties, but one party subsequently shifted its domicile/seat outside of Switzerland (after entering into the agreement but prior to the commencement of arbitral proceedings), then those proceedings were deemed international and thus governed by the PILA.

In concrete terms, in both situations this means that the parties to an arbitration clause could not be fully certain at the time of the execution of the arbitration agreement whether a potential arbitration would be governed by Swiss domestic arbitration law or by the PILA.

With the revised Act, the Swiss Parliament has essentially overturned this controversial ruling and provided that the domicile of the parties to the arbitration agreement at the time of execution is decisive.⁹ This ensures that the applicable *lex arbitri* is fixed at the time of the conclusion of the arbitration agreement.

Nevertheless, under the principle of party autonomy and pursuant to Art. 176(2) of the PILA, parties may still decide by express provision in the arbitration agreement¹⁰ that Chapter 12 should not apply and instead agree on the application of the third part of the Swiss CPC, regardless of the parties' domicile/seat.

b. English as an Admissible Language for Submissions to the Swiss Federal Tribunal

One of the most noteworthy and most significant changes coming into effect with the revised Act is that arbitration-related submissions to the Swiss Federal Tribunal may now be made exclusively in English.¹¹ Under the original Act, critical submissions including annulment or set-aside petitions, were required to be submitted in one of the four official languages of the Swiss Confederation (French, German, Italian or Romansh).

The possibility to now make these submissions in English can only serve to enhance Switzerland's attractiveness as an arbitral seat. Indeed, this revision facilitates ease of access to the Swiss jurisdiction for foreign users whose working language may differ from the four official Swiss languages. This change

⁸ Decision 4P.54/2002 of July 24, 2002.

⁹ Art. 176(1), PILA (2021) ("The provisions of this chapter apply to any arbitration if the seat of the arbitral tribunal is in Switzerland and if, at the time when the arbitration agreement was entered into, at least one of the parties had neither its domicile nor its habitual residence nor its [corporate] seat in Switzerland.").

¹⁰ With regard to the formal requirements for a valid arbitration agreement, the new Art. 178(1) stipulates that the arbitration clause should be in writing or by any

other means that can be evidenced by a text ("As regards its form, an arbitration agreement is valid if made in writing or in any other form allowing it to be evidenced by a text."). The new wording clarifies that all forms of modern communication, e.g., emails, are valid means to prove the existence of a valid arbitration clause.

¹¹ Challenges against arbitral awards rendered in Switzerland are submitted directly to the Swiss Federal Tribunal.

will also likely facilitate greater efficiencies for users and practitioners alike.

For example, considering that the applicable time limit to file challenges against arbitral awards is only 30 days,¹² the ability to make such submissions in English may represent a significant savings in terms of time and costs for many Swiss arbitration users. In this regard, it should be noted that the Swiss Federal Tribunal will continue to issue its decisions in one of the four official languages of Switzerland, even where party submissions are made in English.

Notwithstanding the positive nature of this change, non-Swiss arbitration users may still have an interest in making submissions in one of the official Swiss languages, especially where clarity and form may be important to the success of the petition.

c. Broader Access to Swiss State Court Assistance

The original Act stipulated that an arbitral tribunal seated in Switzerland may seek assistance from the state court at the specific seat of the arbitral tribunal to enforce provisional measures or to execute conservatory measures as well as in the taking of evidence.¹³ Previously, arbitral tribunals seated outside of Switzerland could not directly request assistance from Swiss state courts but were required to apply for the assistance of the Swiss courts through international legal assistance frameworks such as mutual legal assistance treaties.

The new provisions of the revised Act aim to make assistance from Swiss courts more broadly available

to arbitral tribunals and parties seated outside of Switzerland and the application process less burdensome. In this respect, two major changes should be noted in particular:

First, the revised Act extends the right of assistance directly to the parties themselves.¹⁴ Functionally, this means that parties are no longer beholden to arbitral tribunals to request such assistance. The result is increased party autonomy in arbitration proceedings.

Second, whereas under the original Act only arbitral tribunals with a seat in Switzerland were entitled to seek direct court assistance, the revised Act grants both arbitral tribunals and parties to arbitral proceedings seated outside of Switzerland the same right and access to assistance from Swiss courts.¹⁵ Jurisdiction resides with the state court at the place where the interim relief or conservatory measure is to be executed.¹⁶

d. Codification of the Appointment Procedure

The Revised Act also provides a more comprehensive regime addressing the appointment and replacement of arbitrators. The Act now specifically provides for a default procedure to be followed in the event that the parties have not reached an agreement in this regard and simultaneously strengthens its user-friendliness.

The newly revised Art. 179(1) of the PILA stipulates that, unless otherwise agreed, the arbitral tribunal shall be composed of three arbitrators and that each party shall appoint one co-arbitrator.¹⁷ The presiding arbitrator is then to be unanimously appointed by the two co-arbitrators. Where the parties or the arbitrators

¹² See Art. 190(4), PILA (2021). Cf. Art. 191, PILA (1987) together with Art. 77, Swiss Federal Tribunal Act (2005).

¹³ See Arts. 183(2) and 184(2), PILA (1987).

¹⁴ See Art. 183(2), PILA (2021) (“If the party so ordered does not comply therewith voluntarily, the arbitral tribunal or a party may request the assistance of the state court. Such court shall apply its own law.”) and Art. 184(2), PILA (2021) (“Where the assistance of state authorities is needed for taking evidence, the arbitral tribunal or a party with the consent of the arbitral tribunal may request the assistance of the court at the seat of the arbitral tribunal.”).

¹⁵ See Art. 185a, PILA (2021) (“(1) An arbitral tribunal seated abroad or a party to foreign arbitral proceedings may request the assistance of the state court at the

place where an interim or conservatory measure is to be enforced. Article 183 paragraphs 2 and 3 apply *mutatis mutandis*.

(2) An arbitral tribunal seated abroad or a party to a foreign arbitral proceedings may, with the consent of the arbitral tribunal, request the assistance of the state court at the place where the taking of evidence is to take place. Article 184 paragraphs 2 and 3 apply *mutatis mutandis*.”).

¹⁶ See *id.*

¹⁷ See Art. 179(1), PILA (2021) (“The arbitrators shall be appointed or replaced in accordance with the agreement of the parties. In the absence of such an agreement, the arbitral tribunal shall consist of three members, whereby each party shall appoint one member.

fail to comply with their duty to appoint the co-arbitrators or the presiding arbitrator within 30 days, the Swiss state court – at the request of a party – shall take the necessary steps to ensure the proper constitution of the arbitral tribunal. Notably, pursuant to the newly-introduced Art. 179(5) of the PILA (2021) the Swiss state court may appoint all arbitrators in case of a multi-party arbitration. In this way, the Swiss Parliament has bolstered the position of the state courts in order to prevent a potential blockade by one of the parties and thus to ensure the viability of the arbitration proceedings.

e. Appointment of Arbitrators by Swiss Courts Where There Is No Specified Arbitral Seat

Pursuant to Art. 179(1) of the original PILA (1987), arbitrators were to be appointed or replaced in accordance with the procedure agreed by the parties in the arbitration clause. In cases where the parties had not specified a procedure in the arbitration agreement, the Swiss state court at the seat of the arbitration appointed the arbitrators.¹⁸

These original provisions of the Act did not specifically contemplate what should occur where the same arbitration agreement does not designate an arbitral

seat (including instances where the parties only agree that the arbitration will take place in Switzerland, more generally). In this case, Art. 176(3) of the original PILA applied, whereby the arbitrators (who were yet to be appointed) were supposed to determine the seat of the arbitral tribunal. This “vicious circle” has now been addressed in the revised Act.

To ensure Chapter 12 will also apply to “incomplete arbitration agreements” – meaning instances where the parties have not agreed on (i) a procedure for the appointment of arbitrators or (ii) the arbitral seat – the Swiss state court which is seized first will be competent to appoint the arbitrators.¹⁹

This revision renders Switzerland an even more arbitration-friendly jurisdiction. It also underscores the importance for parties to carefully construct their arbitration agreements in order to retain full autonomy over critical procedural processes such as the appointment of arbitrators.

f. Revocation of Arbitral Awards

Challenges to arbitral awards issued in Switzerland are decided directly by the Swiss Federal Tribunal as an immediate single instance, and arbitral awards can be set aside only on very limited grounds.²⁰ This is

The members shall unanimously appoint the presiding arbitrator.”).

¹⁸ See Art. 179(2), PILA (1987).

¹⁹ Under the current and the revised Act, there are no restrictions as to who may act as an arbitrator as long as he or she is independent and impartial. However, the revised Act includes the obligation that any person who is nominated to act as an arbitrator must disclose immediately any facts that could raise doubts regarding his/her independence or impartiality. This obligation exists throughout the entirety of the arbitral proceedings. See Art. 179(6), PILA (2021) (“person asked to take the office of an arbitrator must immediately disclose any circumstances that might raise reasonable doubts as to his or her independence or impartiality. This duty continues throughout the proceedings.”).

The newly introduced Art. 180a, PILA (2021) stipulates the procedure for challenging a member of the arbitral tribunal unless the parties have agreed otherwise. (“(1) Unless the parties have agreed otherwise and if the arbitration proceedings have not yet been concluded, the request for challenge must be submitted in writing and with reasons to the challenged member of the arbitral tribunal within 30 days since the requesting party be-

came aware or could be aware in the exercise of reasonable diligence of the ground for challenge, and must be communicated to the other members of the arbitral tribunal within the same time limit.

(2) *The requesting party may, within 30 days of filing the request for challenge with the arbitral tribunal, submit the challenge to the state court. The decision of the state court shall be final.*

(3) *Unless the parties have agreed otherwise, the arbitral tribunal may continue the arbitration during the challenge procedure and make an award without excluding the challenged member.”).*

²⁰ Under the original Act, only very limited grounds for annulment were codified in Art. 190(2), PILA (1987):

“The award may only be annulled:

a) *if the sole arbitrator was not properly appointed or if the arbitral tribunal was not properly constituted;*

b) *if the arbitral tribunal wrongly accepted or declined jurisdiction;*

c) *if the arbitral tribunal's decision went beyond the claims submitted to it, or failed to decide one of the items of the claim;*

consistent with international best practice, the UNCITRAL Model Law (which, as mentioned, notably plays no direct role otherwise in the revised Act), and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The revised Swiss Arbitration Act now also recognizes grounds (separate from the grounds for setting aside an award) for the *revocation* of arbitral awards and thereby codifies longstanding case law of the Swiss Federal Tribunal in this respect.

Pursuant to the newly-introduced Art. 190a(2) of the PILA, the parties may seek the revocation of an arbitral award for the following reasons: (i) the award was influenced by criminal offences; (ii) new significant evidence is discovered after the arbitral award was issued; or (iii) an arbitrator was not impartial and independent and this was discovered only after the issuance of the award despite proper diligence of the party.²¹ An action for revocation must be filed within 90 days from the discovery of the grounds for the revocation and in any event no later than ten years after the award became final and binding.²²

Practitioners should also take particular note of the fact that the revised Act now also clarifies that arbitral awards can be challenged regardless of the amount in

dispute.²³ This change, together with the ability of parties to submit annulment or set aside petitions in English, may result in an increase in the amount of annulment proceedings brought before the Swiss Federal Tribunal.

However, pursuant to Art. 192(1) of the revised Act as in the original Act, the parties to an arbitration proceeding – where no party is domiciled/seated in Switzerland – may agree to fully or partially exclude means of recourse against arbitral awards.²⁴ Such an exclusion agreement must be in the form specified in Art. 178(1) of the PILA (2021) and may be included in the arbitration agreement or in a subsequent agreement.²⁵ The revised Act thereby maintains the exclusion possibility and mechanism of the original Act, and which has been the subject of extensive and controversial debate in other leading arbitral jurisdictions’ reform efforts (e.g., France, Belgium and Sweden), while adding statutory clarity to the form requirements for a valid such exclusion.

g. Request for “Correction”, “Interpretation,” or “Amendment” of the Award

The revised Act also codifies other post-award remedies which have been acknowledged in the jurispru-

d) if the principle of equal treatment of the parties or the right of the parties to be heard was violated;

e) if the award is incompatible with public policy.”

²¹ See Art. 190a(1), PILA (2021) (“A party may request the revocation of an award if

a. it subsequently discovers significant facts or decisive evidence that could not have been submitted in the earlier proceedings despite due diligence; facts and evidence which arose after the arbitral award was made are excluded;

b. criminal proceedings have established that the arbitral award was influenced by a crime or a misdemeanor to the detriment of the party concerned; a conviction by a criminal court is not required; if criminal proceedings are not possible, proof may be provided in another manner;

c. a ground for challenge in accordance with Article 180 paragraph 1 letter c was, despite due diligence, only discovered after the conclusion of the arbitration proceedings and no other legal remedy is available.”).

²² See Art. 190a(2), PILA (2021) (“The request for revocation must be filed within 90 days of discovery of the ground for revocation. The right to revocation expires

10 years after the awards comes into force, except in the case of paragraph 1 letter b.”).

²³ See Art. 191, PILA (2021), together with Art. 77, Swiss Federal Tribunal Act (2005) (“Irrespective of the value in dispute, an appeal in civil matters may be brought forward against arbitral awards”). Under the original Act, it was disputed whether Art. 74 of the Swiss Federal Tribunal Act (2005) applied and thus whether a threshold amount in dispute of 30,000 Swiss francs must be met.

²⁴ Parties may not agree to exclude revocation proceedings under Art. 190a(1)(b) (where revocation is requested when it is established by criminal proceedings – or other proof – that the arbitral award was influenced by a crime).

²⁵ See Art. 192(1), PILA (2021) (“Where none of the parties has its domicile, its habitual residence or its [corporate] seat in Switzerland, they may, by a statement in the arbitration agreement or in a subsequent agreement fully or partially exclude means of recourse against arbitral awards; revocation pursuant to Article 190a paragraph 1 letter b cannot be waived. The statement must be in the form specified in Article 178 paragraph 1.”).

dence of the Swiss Federal Tribunal, such as: (i) requests for correction, (ii) requests for interpretation, and (iii) requests for amendment of arbitral awards.²⁶

The “*request for correction*” permits the correction of formal errors by the arbitral tribunal; however these are limited to mathematical and typographical errors.²⁷ It does not authorize the arbitral tribunal to reach the substance of the award.

The “*request for interpretation*” allows for the arbitral tribunal to explain or clarify certain passages of the award.²⁸

With a “*request for amendment*” the parties may seek a supplementary award on claims that had been brought before the arbitral tribunal during the proceedings which were mistakenly omitted from or not clearly decided on in the award.²⁹

For parties, it is important to keep in mind that these three categories of requests must be submitted within 30 days of the notification of the award.³⁰ These remedies do not impact on the 30-day time limit for filing annulment or set aside petitions against an arbitral award.

h. Waiver of Procedural Objections

Finally, the revised Act helpfully codifies the obligation of parties to object immediately whenever a procedural error has occurred, consistent with existing jurisprudence of the Swiss Federal Tribunal.³¹

A party’s failure to comply with this obligation leads to a waiver of its right to assert the procedural error later in the course of the proceedings or its right to annulment or setting aside of the award on the same grounds. On the one hand, this prevents the parties from exploiting a procedural error for purely tactical

reasons, especially when a decision is rendered against them. On the other hand, it urges the parties to exercise greater diligence and caution during the proceedings.

6. Summary and Conclusion

It is important for arbitration practitioners and users to become familiar with the new features of the revised Swiss Arbitration Act.

The 2021 revisions to the Act strengthen Switzerland’s position as one of the leading arbitration jurisdictions while at the same time increasing its accessibility and user-friendliness for non-Swiss parties. Indeed, the possibility to make submissions in English to the Swiss Federal Tribunal will simplify annulment and setting aside procedures for many non-Swiss users and practitioners. Likewise, the express codification of correction, interpretation, and amendment procedures and the extension of access to Swiss state court assistance to parties and arbitral tribunals seated outside of Switzerland are welcome changes.

Ultimately, the 2021 revisions to the Swiss Arbitration Act represent a careful balancing act by the Swiss Parliament. While the revised Act attempts to address some important trends and developments in national arbitration law that have arisen since 1987, it consciously left other issues open. Thus, the revisions acknowledged the need for more legal clarity on certain issues while, at the same time, avoided overburdening or overcomplicating the PILA as a whole.

²⁶ See Art. 189a(1), PILA (2021) (“*Unless the parties have agreed otherwise, either party may apply to the arbitral tribunal, within 30 days of the issuing of the award, to correct any typographical and arithmetical error in the award, to explain certain parts of the award or to issue an additional award on claims that have been asserted in the course of the arbitration but not included in the award. Within the same period of time, the arbitral tribunal may correct, explain or amend the award on its own initiative.*”). The parties remain free to exclude the availability of such post-award petitions by express agreement.

²⁷ See *id.*

²⁸ See *id.*

²⁹ See *id.*

³⁰ See *id.* In addition, the arbitral tribunal is entitled to correct, interpret, or amend the arbitral award *sua sponte*, even without a request from the parties. In so doing, it must observe the same 30-day period.

³¹ See Art. 182(4), PILA (2021) (“*A party which continues the arbitration proceedings without promptly giving notice of a violation of the procedural rules which it has detected or could have detected with reasonable diligence, may not claim such violation later.*”).

In the end, the revised Act appears to have successfully preserved flexibility and the fundamental principle of party autonomy, both central tenets of the original Act.

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