



# AI COMMENTARY: SWISS INTERNATIONAL ARBITRATION LAW 1987

Prepared by Galadari Advocates & Legal Consultants with ChatGPT

Edited by Abdulla Ziad Galadari, Sergejs Dilevka, and Dimitriy Mednikov

## About Galadari

Galadari is a full-service Emirati law firm dedicated to providing legal solutions at every stage of the business cycle.

Since 1983, we have supported the development of the United Arab Emirates (UAE) legal framework, while contributing to the industry and driving great commercial impact across the Emirates and supporting our clients to navigate through their challenges.

For four decades, our goal has been to deliver the highest-quality product to solve complication issues. Our team take pride in our uncompromising approach to quality and recognise everything we do, or produce is a measurement of our commitment to quality. We give 100% the first time and every time.

Our legal team consists of over 60 locally qualified Emirati and international lawyers across 3 offices in the UAE who are fluent in 18 different languages. Our Emirati advocates have full rights of audience across all UAE Courts. Our team aims to provide the highest standard of legal service and maintain the same level of quality at every point of contact.

Aligned with our core values, Galadari is committed to being a responsible business. We are actively progressing towards a diverse and inclusive workforce, using our legal capabilities to do good in the community through pro bono work, supporting communities and charities across the UAE, and reducing our environmental impact.

## Galadari's International Arbitration Practice

Galadari “are a local law firm with international standards and lawyers, familiar with local UAE laws, DIFC laws, and international laws” (*The Legal 500 EMEA – UAE 2023*).

With over four decades of experience in the UAE, our team possesses extensive expertise gained from their involvement in high-profile, intricate disputes worth millions of dollars across the region. Clients rely on our broad-ranging knowledge to guide them on the most suitable strategy for their business when faced with a dispute, whether as the claimant or respondent.

We represent clients in proceedings governed by a variety of international arbitration bodies, including ICC, LCIA, SCC, SCIA, DIAC, and GCC CAC. Additionally, we also provide representation in ad-hoc arbitration cases, and arbitration-related proceedings before the courts of Dubai, the DIFC, Abu Dhabi, and the ADGM.

With one of the largest teams of Emirati advocates in the country, we offer a one-stop shop from the initiation to the conclusion of any arbitration, eliminating the need for external counsel.

Clients and legal directories continuously praise our forward-thinking approach. The team was shortlisted for Arbitration Law Firm of the Year by Thomson Reuters Asian Legal Business Middle East Law Awards 2023, and Arbitration Team of the Year in Law.com International's Middle East Legal Awards 2023.

## Galadari's International Arbitration Team



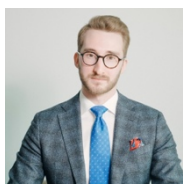
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## Editors' Preface

Galadari's Artificial Intelligence (AI) Commentary on arbitration rules, laws, and treaties, was composed by Abdulla Ziad Galadari, Sergejs Dilevka, and Dimitriy Mednikov.

The term 'artificial intelligence' (AI) was first suggested by John McCarthy in 1955, defining it as a challenge *"of making a machine behave in ways that would be called intelligent if a human were so behaving"*.

Almost seventy years later, further to multiple waves advancing AI technologies and notwithstanding several so-called 'AI winters' (prolonged periods of time when interest and investment in AI was significantly decreasing), AI has finally arrived as an essential technology for our future development and is here to stay. Today, leading AI platforms are able to maintain logical conversations their users, thus, satisfying Mr McCarthy's problem by making a machine behave intelligently.

The benefits of AI for both individuals and businesses have transitioned from being purely theoretical to practicable and, to a great extent, quantifiable. For legal practitioners, presently, such quantifiable benefits would likely be based on the billable time saved, for example, on document review and textual analysis or production of documents based on standard templates. Further, there is a huge potential to use AI to write simple code automating mundane tasks, such as generation of exhibit lists, (re)numbering of exhibits, bulk-conversion of documents from one file format into another, updating cross-references or footnotes in a document — one can think of plenty of use cases and what is needed is a bit of knowledge on how to make basic changes to that code and run it. However, as of the date of this publication, it seems that the general consensus among legal practitioners is that AI systems cannot be reliably used for legal research and all of the results of such research would still have to be reviewed with great care by human lawyers.

Galadari's AI Commentary on arbitration rules, laws, and treaties, is an experiment focussed on using AI to ascertain the current quality of AI analysis, and to determine whether AI is able to digest large quantities of complex information and produce an accurate and logical analysis of the relevant text in respect of various arbitration rules.

In the development of this AI Commentary, we used ChatGPT (GPT-3.5), an AI-powered language model developed by OpenAI. This AI model is capable of generating human-like text based on context and past conversations. The method used, for consistency, and not due to lack of imagination, implemented the use of the following prompt template to generate commentary on each provision of the relevant text: 'analyse article/section X of arbitration law/rules/treaty'.

Overall, the general outcome of our experiment indicates that, in the majority of situations, ChatGPT was able to successfully dissect provisions, spot important nuances, and generate meaningful commentary on the relevant provisions. Specifically, once ChatGPT was presented with a provision for analysis, it would typically attempt to break down the text into separate aspects into a list or bullet point format, tackling each and summarising the provision at the end of its analysis. This approach is consistently observed by ChatGPT across all the AI Commentary publications. We found this method to be suitable and informative, allowing readers to process the analysis in a systematic manner and benefit from ChatGPT's separation of the provision into smaller bits that the reader may be specifically interested in. It was noted that ChatGPT does not overlook or miss certain aspects of a provision, which is a potential human risk factor. ChatGPT addressed every aspect of provisions without fail, for example:

**Article 21.3 of the UAE Federal Law No. 6 of 2018 on Arbitration (“UAE Arbitration Law”):** “The Arbitral Tribunal may, at the request of any party or on its own motion, amend, suspend, or cancel an interim measure it has ordered, in exceptional circumstances, by prior notice to be given to the Parties.”

**ChatGPT:** “Article 21.3 of the UAE Arbitration Law grants the Arbitral Tribunal the authority to modify, suspend, or revoke interim measures it has previously ordered during the arbitration process. These changes can be made under specific conditions referred to as “exceptional circumstances”. Let us analyse this article:

1. *Modification:* The Tribunal can amend or alter the scope or conditions of an interim measure based on the evolving circumstances of the case.
2. *Suspension:* The Tribunal can suspend the enforcement of an interim measure temporarily if the circumstances warrant it.
3. *Cancellation:* The Tribunal can completely cancel or revoke an interim measure previously ordered if it deems it no longer necessary or appropriate.
4. *Exceptional Circumstances:* The Tribunal’s power to amend, suspend, or cancel interim measures is limited to exceptional circumstances, implying that such measures are not subject to routine or arbitrary alterations.
5. *Prior Notice:* The article requires the Tribunal to provide advance notice to the parties before making any changes to the interim measures. This ensures transparency and allows parties to present their positions on the proposed amendments.”

The commentary produced using ChatGPT did display some shortcomings. For example, there were instances when ChatGPT would ‘hallucinate’, making something up, which is a well-known limitation not only for OpenAI and ChatGPT users but also for other AI systems, for example:

**Extract from ChatGPT’s commentary on Article 2.4 of DIAC Arbitration Rules 2022 containing a reference to Article 32:** “This exception indicates that certain specific provisions, such as Article 32, may have limited application to agreements to arbitrate made before the effective date of the Rules. It provides flexibility for parties to agree on different rules or procedures ~~regarding the settlement or termination of proceedings~~, even if the general principle of the Rules taking precedence over the parties’ agreement still applies.”

**Human lawyer:** Article 32 of DIAC Arbitration Rules 2022 does not concern ‘settlement or termination of proceedings’ but sets out provisions pertaining to expedited proceedings.

Occasionally, ChatGPT would not appreciate the important distinction between ‘may’ or ‘should’ and the commanding ‘shall’, which can be crucial, for example:

**Article 4.1(c) of DIAC Arbitration Rules 2022:** “Any party wishing to commence an arbitration under the Rules shall submit to the Centre a Request which shall include: [...] (c) a copy of any relevant agreement between the parties, which contains the agreement to arbitrate, in respect of which the claim arises; [...].”

**ChatGPT:** “Article 4.1 of the DIAC Arbitration Rules outlines the requirements for submitting a Request to commence an arbitration under the Rules. Let us analyse each component of this article: [...] Copy of relevant agreement: The Request ~~should~~ include a copy of any relevant

*agreement between the parties that contains the agreement to arbitrate, which is the basis for the claim being made.”*

Parenthetically, ChatGPT sometimes would simply paraphrase a provision several times within a single answer or alter the format of the responses with a series of prompts within the same commentary. To be fair, most of these provisions were quite nominal and did not contain much substance for analysis, for example:

**Definition of ‘Parties’ Article 1.1 of UAE Arbitration Law:** *“Parties: The Claimant and the Respondent, whatever their number.”*

**ChatGPT:** *“Parties: Refers to the Claimant and the Respondent involved in the arbitration. The parties could be individuals, companies, or any legal entities engaged in a dispute.”*

It was expected that there would be such limitations, but it was pleasantly surprising that their frequency was much lower than anticipated.

Being cognisant of all the existing issues and scepticism within the legal community, we consider that this experimental AI Commentary could be of assistance to practitioners in at least two ways. First, it allows the reader an opportunity to perform a sense check on their understanding of a provision or its aspect against ChatGPT’s analysis. Second, the time required to produce 24 publications comprising the AI Commentary was significantly less than the typical duration needed to produce a single comprehensive commentary text on any of the relevant arbitration laws, rules, or treaties. Thus, should it become necessary, a similar AI commentary could be produced on any arbitration law/rules/treaty at a fraction of time and cost typically associated with such a task.

The purpose of publishing the AI Commentary is to provide arbitration practitioners and academics with a general sense of what is presently possible to achieve in the field of arbitration with the assistance of generative AI software, and encourage the arbitration community to push the boundaries of arbitration as a flexible, efficient, and effective dispute resolution method.

Notably, all commentary was generated with ChatGPT and was supported by a selective review by the Editors. Accordingly, the commentary may contain inaccurate and/or incomplete information. Readers are strongly advised to exercise caution reading the commentary with some scepticism and to keep a pencil in hand to note any inaccuracies. Needless to say, nothing in this text should be considered and/or relied upon as legal advice. For detailed information, please refer to OpenAI’s Terms & Policies.

This project would not be complete without front page illustrations, which were also generated by AI. DALL E, another OpenAI system capable of creating images based on prompts, was used for this purpose. The chosen concept is based on a watercolour painting style, primarily portraying athletic rivalries in locations that correspond to the relevant arbitration law, rules, or treaty. The hope is that the readers will find the illustrations aesthetically appealing.

Should you have any questions, comments, or observations, including any noticed errors, please do not hesitate to contact us directly via email at [s.dilevka@galadarilaw.com](mailto:s.dilevka@galadarilaw.com).

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## Chapter 1: General Provisions

## VI. Arbitration agreement

## Art. 7

If parties have concluded an arbitration agreement with respect to an arbitrable dispute, a Swiss 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 invalid, inoperable or incapable of being performed; or
- (c) the arbitral tribunal cannot be constituted for reasons for which the respondent in the arbitration is manifestly responsible.

Article 7 of the Swiss Private International Law Act (PILA) pertains to the jurisdiction of Swiss courts when parties have entered into an arbitration agreement in relation to a dispute that is subject to arbitration. The article outlines the circumstances under which a Swiss court should decline its jurisdiction in favour of arbitration. Let us break down and analyse the different provisions of Article 7:

1. Jurisdiction of Swiss Courts: Article 7 begins by establishing the general principle that if parties have a valid arbitration agreement concerning a dispute, the Swiss court where an action is brought must relinquish its jurisdiction. In other words, the court should not hear the case and instead defer to the arbitration process.
2. Exceptions to Declining Jurisdiction: However, Article 7 also lays out three exceptions to this general rule, under which the Swiss court can retain jurisdiction despite the existence of the arbitration agreement. These exceptions are as follows:
  - a. Respondent's Submission: The first exception (a) applies if the respondent (the party against whom the claim is made) has voluntarily and unequivocally submitted to the arbitration procedure without any reservation. This means that if the respondent willingly participates in the arbitration process without objecting to its validity or effectiveness, the court may retain jurisdiction.
  - b. Invalidity, Inoperability, or Incapability of Arbitration Agreement: The second exception (b) allows the court to retain jurisdiction if it determines that the arbitration agreement is invalid, inoperable, or incapable of being performed. In this case, the court essentially reviews the validity and effectiveness of the arbitration agreement itself. If the court finds that the agreement is not enforceable for any of these reasons, it can proceed to hear the case.

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<sup>1</sup> Source: [https://www.swissarbitration.org/wp-content/uploads/2021/05/20210129-Chapter-12-PILA\\_Translation\\_English.pdf](https://www.swissarbitration.org/wp-content/uploads/2021/05/20210129-Chapter-12-PILA_Translation_English.pdf)

- c. Responsibility for Failure to Constitute the Arbitral Tribunal: The third exception (c) comes into play when the arbitral tribunal cannot be constituted for reasons that are clearly the fault of the respondent party in the arbitration. This might include situations where the respondent intentionally obstructs or delays the process of constituting the arbitral tribunal. In such cases, the court can exercise its jurisdiction.
3. Overall Implications: Article 7 of the Swiss PILA seeks to balance the principle of party autonomy in arbitration agreements with the need for judicial intervention in certain situations. It underscores the significance of arbitration agreements and generally encourages parties to honour their agreements to arbitrate disputes. However, it also acknowledges that there may be circumstances in which court intervention is necessary, such as when the arbitration agreement is ineffective or when one party hampers the arbitration process.

The article serves to provide clarity and guidance to parties involved in arbitration disputes within Switzerland and helps ensure the consistent application of the law. It aligns with the broader international trend towards upholding arbitration agreements and promoting the resolution of disputes outside of traditional court systems.

## Chapter 12: International Arbitration

## I. Scope of application; seat of the arbitral tribunal

## Art. 176

- (1) The provisions of this Chapter shall apply to arbitrations with their seat in Switzerland if at least one of the parties to the arbitration agreement, at the time of its conclusion, did not have its domicile, habitual residence or seat in Switzerland.**

Article 176(1) of the Swiss Private International Law Act (PILA) addresses the applicability of the provisions within a specific chapter of the PILA to arbitrations that have their seat in Switzerland. Let us break down and analyse the content of this article:

1. **Scope of Application:** Article 176(1) establishes the scope of application for a specific chapter of the PILA. This chapter pertains to arbitrations with their seat in Switzerland. The term “seat” in the context of international arbitration refers to the legal location where the arbitration is centered and where procedural and substantive matters are determined. The chapter contains regulations and provisions governing various aspects of arbitration conducted in Switzerland.
2. **Jurisdictional Requirement:** The key condition for the application of the provisions in this chapter is that at least one of the parties involved in the arbitration agreement must meet certain jurisdictional criteria at the time the arbitration agreement is concluded. Specifically, the party should not have its domicile, habitual residence, or seat in Switzerland. This jurisdictional requirement emphasises that the provisions of the chapter are intended to apply to international arbitrations, where at least one party is foreign to Switzerland.
3. **Implications:** Article 176(1) reflects Switzerland’s commitment to providing a legal framework that supports and regulates international arbitration proceedings that are seated within its jurisdiction. By specifying that the provisions in this chapter apply to cases where one of the parties is not domiciled, habitually resident, or seated in Switzerland, the article ensures that the rules and regulations designed for international arbitration are only triggered when the international element is present.
4. **Alignment with International Standards:** This provision is in line with international best practices and principles concerning international arbitration. It emphasises the principle of party autonomy, where parties are allowed to choose arbitration as a method of resolving their disputes, even if they are from different countries. At the same time, it acknowledges the importance of providing a balanced and predictable legal framework to govern these cross-border disputes.
5. **Implication for Practice:** Article 176(1) clarifies the circumstances under which the specific chapter’s provisions apply to arbitration proceedings seated in Switzerland. It guides practitioners and parties in understanding which set of rules and regulations will govern their arbitration, based on the nationality or location of the parties involved. This clarification helps ensure that parties entering into international arbitration agreements with a connection to Switzerland can anticipate the legal framework that will govern their disputes.

In summary, Article 176(1) of the Swiss PILA serves to define the scope of application for a particular chapter within the PILA, ensuring that its provisions apply to international arbitrations with a seat in Switzerland involving parties that are foreign to the Swiss jurisdiction. This provision aligns with international arbitration norms and helps provide clarity and predictability for parties engaged in cross-border arbitration proceedings.

**(2) The parties may, either in the arbitration agreement or in a subsequent agreement, exclude the application of this Chapter and agree on the application of Part 3 of the CCP. The exclusion shall meet the conditions as to form set out in Article 178(1).**

Article 176(2) of the Swiss Private International Law Act (PILA) addresses the ability of parties engaged in an arbitration to exclude the application of a specific chapter within the PILA and instead agree to apply Part 3 of the Swiss Civil Procedure Code (CCP). Let us analyse the content and implications of this provision:

1. **Flexibility and Party Autonomy:** Article 176(2) reflects the principle of party autonomy in arbitration, which allows the parties involved to shape the arbitration process according to their preferences and needs. This provision recognises that parties should have the freedom to choose the legal framework that governs their arbitration proceedings, as long as certain conditions are met.
2. **Exclusion of Chapter and Application of CCP:** The provision states that the parties have the authority to exclude the application of the chapter within the PILA that would otherwise govern their arbitration and instead opt for the application of Part 3 of the CCP. Part 3 of the CCP deals with arbitration, and its provisions outline the rules and procedures for arbitral proceedings conducted within Switzerland.
3. **Agreement Requirements:** For such exclusion to be effective, the parties must make this choice explicitly and either include it in the arbitration agreement itself or in a subsequent agreement. In either case, the agreement must satisfy the formal requirements outlined in Article 178(1) of the PILA. This ensures that the agreement to exclude the PILA provisions is made knowingly and in a legally valid manner.
4. **Implications:** Article 176(2) underscores Switzerland's commitment to facilitating efficient and flexible arbitration proceedings. By allowing parties to opt out of the specific chapter in the PILA and adopt the procedural rules from Part 3 of the CCP, the provision enables parties to tailor their arbitration process to suit their particular circumstances and preferences.
5. **Practical Considerations:** The provision is particularly relevant for parties who may find the rules and regulations in Part 3 of the CCP more suitable for their arbitration proceedings than the provisions in the chapter of the PILA. This might be the case if the parties are already familiar with the CCP, if they prefer certain procedural aspects under the CCP, or if they find the CCP's provisions more aligned with their commercial or legal needs.
6. **Balance between Flexibility and Protection:** While Article 176(2) supports party autonomy, it also strikes a balance by requiring the exclusion to meet the formalities specified in Article 178(1). This ensures that the decision to exclude the PILA provisions is made in a clear and deliberate manner, preventing any hasty or inadvertent choices.

In summary, Article 176(2) of the Swiss PILA recognises and respects party autonomy by allowing parties to exclude the application of a specific chapter within the PILA in favour of Part 3 of the CCP for their arbitration proceedings. This provision enhances the flexibility of arbitration in Switzerland and allows parties to adopt the procedural framework that best suits their needs while maintaining appropriate safeguards.

**(3) The seat of the arbitration shall be determined by the parties or by the arbitral institution designated by the parties, or, failing which, by the arbitral tribunal.**

Article 176(3) of the Swiss Private International Law Act (PILA) addresses the determination of the seat of arbitration in cases where the parties have not explicitly specified it or where the arbitral institution has not been designated to make this determination. Let us analyse the content and implications of this provision:

1. **Seat of Arbitration:** The “seat of arbitration” refers to the legal location where the arbitration proceedings are based. It has significant implications for matters such as the legal framework governing the arbitration, the procedural laws applicable, and the supervisory authority of the local courts over the arbitration process.
2. **Determination of the Seat:** Article 176(3) outlines the different ways in which the seat of arbitration can be determined when the parties have not provided explicit instructions:
  - a. **By the Parties:** The parties can agree on the seat of arbitration within their arbitration agreement. This agreement will be legally binding and will determine the jurisdictional and procedural framework for the arbitration.
  - b. **By the Arbitral Institution:** Alternatively, the parties may designate an arbitral institution to determine the seat of arbitration. This is often the case when parties want a neutral and specialised institution to make the decision on their behalf.
  - c. **By the Arbitral Tribunal:** If the parties have not specified the seat of arbitration and have not designated an arbitral institution, the responsibility falls to the arbitral tribunal to determine the seat. The tribunal will consider various factors, including the parties’ preferences, the convenience of the location, and any legal implications associated with the seat.
3. **Implications:** Article 176(3) reflects the importance of selecting the seat of arbitration, as it influences the legal framework, procedural rules, and level of judicial supervision that will apply to the arbitration. The provision offers flexibility by allowing the parties to make this determination or delegate it to an arbitral institution or tribunal, depending on the circumstances.
4. **Party Autonomy and Procedural Flexibility:** The provision is consistent with the principle of party autonomy in arbitration, which allows parties to shape their arbitration process to best suit their needs. It also acknowledges the practicality of entrusting the seat determination to the arbitral institution or tribunal when parties have not agreed upon it.
5. **Practical Considerations:** The selection of the seat of arbitration is a critical decision that should be made with care. Parties may consider factors such as the legal infrastructure and



neutrality of the jurisdiction, as well as its proximity to evidence, witnesses, and the parties themselves. This choice can significantly impact the conduct and outcome of the arbitration.

6. Arbitration's International Nature: Article 176(3) recognises the international nature of arbitration by providing mechanisms for determining the seat when parties from different jurisdictions are involved. The flexibility to determine the seat helps accommodate the parties' diverse preferences and needs.

In summary, Article 176(3) of the Swiss PILA emphasises the importance of determining the seat of arbitration and provides mechanisms for making this determination in cases where the parties have not specified it. The provision supports party autonomy and procedural flexibility while acknowledging the practical necessity of determining the seat for the effective conduct of arbitration proceedings.

## II. Arbitrability

### Art. 177

#### (1) Any claim involving a financial interest may be the subject-matter of an arbitration.

Article 177(1) of the Swiss Private International Law Act (PILA) addresses the scope of claims that can be subject to arbitration. Let us analyse the content and implications of this provision:

1. Scope of Claims: Article 177(1) establishes a broad principle that any claim involving a financial interest can be the subject of an arbitration. This means that parties are generally free to arbitrate disputes that have a financial aspect, regardless of the specific nature of the claim or the parties involved.
2. Financial Interest: The provision uses the term "financial interest" without further definition. In a legal context, a financial interest generally refers to a stake in a financial outcome, such as money, property, or economic benefits. This provision acknowledges that disputes with a financial component are suitable for arbitration, emphasising the flexibility of arbitration to accommodate a wide range of commercial and financial matters.
3. Implications: Article 177(1) reflects Switzerland's pro-arbitration stance and recognises the importance of providing parties with the freedom to choose arbitration as a method of resolving disputes. By allowing claims involving financial interests to be subject to arbitration, the provision supports party autonomy and facilitates the resolution of a broad spectrum of disputes through an alternative dispute resolution mechanism.
4. Commercial and Civil Matters: The provision's openness to claims involving financial interests extends to both commercial and civil matters. While some arbitration statutes or rules may restrict arbitration to specific types of disputes (e.g., commercial disputes), Article 177(1) of the Swiss PILA does not impose such limitations, indicating a willingness to accommodate various types of financial claims.
5. Flexibility and Specialisation: By allowing a wide range of financial claims to be arbitrated, the provision acknowledges the flexibility of arbitration in adapting to the diverse needs of parties. Parties can choose arbitration to resolve matters that require specialised

knowledge, industry expertise, or confidentiality, which may not be readily available in a traditional court setting.

6. **International Arbitration Norms:** The provision aligns with international arbitration norms and practices, where the flexibility to arbitrate a broad spectrum of disputes is recognised and encouraged. It reinforces Switzerland’s status as a hub for international arbitration by allowing parties from different jurisdictions to arbitrate disputes involving financial interests.
7. **Practical Considerations:** The provision’s general language can lead to a wide interpretation of what constitutes a “financial interest”. Parties and arbitrators should consider the scope of this provision when drafting arbitration agreements and when determining whether a particular dispute falls within its purview.

In summary, Article 177(1) of the Swiss PILA promotes the flexibility of arbitration by allowing any claim involving a financial interest to be subject to arbitration. This provision supports party autonomy, facilitates the resolution of diverse disputes, and reinforces Switzerland’s reputation as an arbitration-friendly jurisdiction.

**(2) Where a party to the arbitration agreement is a State, or an enterprise held by, or an organisation controlled by, a State, it may not invoke its own law in order to contest the arbitrability of a dispute or its capacity to be a party to an arbitration.**

Article 177(2) of the Swiss Private International Law Act (PILA) addresses a specific aspect of arbitration involving state entities or state-controlled entities. Let us analyse the content and implications of this provision:

1. **Scope of Application:** Article 177(2) is relevant when a party to an arbitration agreement is a State or an enterprise held by, or an organisation controlled by, a State. The provision specifically addresses situations where such entities attempt to challenge the arbitrability of a dispute or their capacity to participate in an arbitration.
2. **Limitation on Invoking National Law:** The provision imposes a limitation on the ability of these state entities to use their own domestic law as a basis for challenging the arbitrability of a dispute or their capacity to be a party to arbitration. In other words, the provision restricts the application of a state’s domestic law when it comes to contesting the validity of the arbitration agreement or the state entity’s ability to participate in the arbitration process.
3. **Preserving Arbitral Autonomy:** Article 177(2) is in line with the principle of promoting the autonomy of arbitration agreements. It seeks to prevent state entities from relying on their own legal systems to undermine the arbitration process. By limiting the scope of what can be raised as a challenge to arbitrability or capacity, the provision helps maintain the integrity of arbitration as a chosen method of dispute resolution.
4. **Avoiding Manipulation and Delay:** The provision aims to prevent state entities from using their position and control over their national legal systems to manipulate or delay arbitration proceedings. This is particularly important in international arbitration, where

parties from different legal and cultural backgrounds seek a neutral forum for dispute resolution.

5. International Arbitration Norms: Article 177(2) reflects a principle that is consistent with international arbitration norms and practices. It aligns with the idea that parties to an arbitration agreement should generally be held to their chosen method of dispute resolution and should not be allowed to undermine that choice by invoking their own domestic legal rules.
6. Balancing State Sovereignty and Arbitral Autonomy: While the provision restricts the application of a state's domestic law in certain situations, it strikes a balance between the principle of state sovereignty and the need to uphold the sanctity of arbitration agreements. It respects the autonomy of arbitration agreements while recognising the unique status of state entities.
7. Practical Significance: For parties dealing with state entities or state-controlled entities, Article 177(2) provides assurance that these entities cannot easily contest the validity of the arbitration agreement or their capacity to arbitrate based solely on their own domestic legal rules.

In summary, Article 177(2) of the Swiss PILA prevents state entities and entities controlled by states from using their own domestic laws to challenge the arbitrability of a dispute or their capacity to participate in arbitration. The provision maintains the autonomy of arbitration agreements and ensures that parties' choices for resolving disputes through arbitration are respected.

### III. Arbitration agreement and arbitration clause

#### Art. 178

##### **(1) The arbitration agreement shall be valid if made in writing or in any other manner that can be evidenced by text.**

Article 178(1) of the Swiss Private International Law Act (PILA) deals with the validity of arbitration agreements and the requirement for a written form. Let us analyse the content and implications of this provision:

1. Validity of the Arbitration Agreement: Article 178(1) states that an arbitration agreement shall be considered valid if it is made either in writing or in any other manner that can be evidenced by text. This provision establishes the conditions under which an arbitration agreement is legally enforceable.
2. Written Form Requirement: The provision acknowledges the principle that arbitration agreements, as contractual agreements, should be in a written format. This requirement aims to ensure clarity, evidence, and a degree of formality in the agreement between parties to submit their disputes to arbitration.
3. Flexibility in Form: While the written form is emphasised, Article 178(1) also recognises that advancements in technology and communication have expanded the ways in which agreements can be documented. The phrase "or in any other manner that can be

evidenced by text” highlights the flexibility to use electronic forms of communication to establish the agreement’s existence and content.

4. **Evolution of Communication:** In the modern context, the provision acknowledges that communication methods have evolved beyond traditional pen-and-paper writings. It takes into account electronic communications, emails, digital signatures, and other forms of written evidence that can demonstrate the parties’ intent to enter into an arbitration agreement.
5. **Balancing Formality and Accessibility:** Article 178(1) strikes a balance between the need for a formal record of the agreement (to prevent disputes over whether an agreement was actually reached) and the practicality of allowing various forms of communication. It ensures that the requirement for a written record does not become overly burdensome or restrictive.
6. **International Arbitration Norms:** The provision aligns with international arbitration norms, as many arbitration statutes and rules recognise electronic communications and other forms of evidence as valid means of demonstrating an arbitration agreement. This flexibility is particularly relevant for international disputes involving parties from different jurisdictions.
7. **Practical Significance:** Parties and practitioners should be aware of the different forms of evidence that can establish the existence of an arbitration agreement under Article 178(1). When crafting arbitration agreements, parties can use various communication methods that comply with the requirement for a written or textually evidenced agreement.

In summary, Article 178(1) of the Swiss PILA emphasises the validity of arbitration agreements that are made in writing or can be evidenced by text, recognising the need for a formal record while accommodating modern forms of communication. This provision aligns with international practices and ensures that arbitration agreements remain accessible and enforceable while maintaining a degree of formality.

**(2) As regards its substance, the arbitration agreement shall be valid if it conforms to the law chosen by the parties, or to the law applicable to the dispute, in particular the law governing the main contract, or to Swiss law.**

Article 178(2) of the Swiss Private International Law Act (PILA) pertains to the validity of the substance of an arbitration agreement and the legal standards by which its validity is assessed. Let us analyse the content and implications of this provision:

1. **Choice of Law Principle:** Article 178(2) establishes a principle by which the validity of the substance of an arbitration agreement is determined. This validity is assessed based on the law chosen by the parties or the applicable law to the dispute, which includes the law governing the main contract, or alternatively, Swiss law.
2. **Validity Assessment:** The provision addresses the legal framework under which the arbitration agreement is assessed for its validity. The agreement’s substance refers to the terms and conditions that define the parties’ intention to arbitrate their disputes. This

includes aspects such as the scope of disputes covered, the number of arbitrators, the seat of arbitration, and procedural matters.

3. **Law Chosen by the Parties:** According to Article 178(2), the arbitration agreement is valid as to its substance if it conforms to the law explicitly chosen by the parties. This recognises the principle of party autonomy, where the parties have the freedom to choose the governing law for their arbitration agreement, irrespective of the law that might apply to the underlying dispute.
4. **Applicable Law to the Dispute:** If the parties have not explicitly chosen a governing law for the arbitration agreement, the provision stipulates that the agreement is valid if it conforms to the law applicable to the dispute. This means that the law that governs the main contract, which is often the basis for the dispute, can be applied to assess the validity of the arbitration agreement's substance.
5. **Swiss Law:** Alternatively, the provision allows the arbitration agreement to be valid as to its substance if it conforms to Swiss law. This reflects Switzerland's willingness to have its own legal standards applied to assess the validity of arbitration agreements, especially when parties have not explicitly chosen a governing law.
6. **Implications:** Article 178(2) underscores the importance of ensuring that the substance of the arbitration agreement is valid according to the chosen law or the applicable law to the dispute. This provision promotes predictability and clarity by providing a clear framework for assessing the validity of the arbitration agreement's substance.
7. **International Arbitration Norms:** The provision is in line with international arbitration norms that recognise the parties' autonomy to choose the governing law of their arbitration agreements. It also respects the connection between the arbitration agreement and the underlying contract, which is often a key consideration in arbitration.
8. **Practical Significance:** Parties engaging in international arbitration should carefully consider the choice of law for their arbitration agreement. They should clearly specify the governing law within the agreement or be aware of the applicable law to the dispute to ensure the validity of the agreement's substance.

In summary, Article 178(2) of the Swiss PILA establishes the legal standards by which the validity of the substance of an arbitration agreement is assessed. It allows for the application of the law chosen by the parties, the law applicable to the dispute, or Swiss law to determine the agreement's validity, promoting clarity and predictability in the arbitration process.

**(3) The validity of an arbitration agreement cannot be contested on the grounds that the main contract may not be valid or that the arbitration agreement relates to a dispute that has not yet arisen.**

Article 178(3) of the Swiss Private International Law Act (PILA) addresses specific grounds on which the validity of an arbitration agreement cannot be contested. Let us analyse the content and implications of this provision:



1. **Validity of the Arbitration Agreement:** Article 178(3) deals with challenges to the validity of the arbitration agreement itself. It establishes certain grounds on which the validity of the arbitration agreement cannot be contested, regardless of the circumstances.
2. **Invalidation of the Main Contract:** The provision states that the validity of an arbitration agreement cannot be challenged on the basis that the main contract (the underlying contract that contains the arbitration agreement) may not be valid. In other words, even if there are issues with the validity of the main contract, those issues do not automatically affect the validity of the arbitration agreement contained within it.
3. **Anticipating Future Disputes:** The provision also addresses the situation where parties might argue that the arbitration agreement is invalid because it relates to a dispute that has not yet arisen. It explicitly states that the arbitration agreement's validity cannot be contested on this basis. This recognises the principle that parties can agree in advance to arbitrate potential future disputes, thus enabling parties to set out the terms for resolving such disputes in a contract.
4. **Protecting the Autonomy of the Arbitration Agreement:** Article 178(3) serves to protect the autonomy of the arbitration agreement from potential challenges that may arise due to issues with the main contract or disputes that are not yet present. This principle aligns with the general pro-arbitration stance in international commercial law, where arbitration agreements are recognised as separate and distinct from the main contract.
5. **Practical Implications:** The provision's emphasis on preserving the validity of the arbitration agreement supports legal certainty and predictability in international arbitration. Parties can have confidence that the arbitration agreement's validity remains intact even if challenges arise concerning the main contract or the timing of potential disputes.
6. **Consistency with International Norms:** Article 178(3) is consistent with international arbitration norms and practices. It reflects the broader understanding that arbitration agreements should be upheld and enforced unless there are clear and valid reasons to invalidate them.
7. **Practical Significance:** Parties entering into contracts with arbitration agreements should be aware of the protections provided by Article 178(3). It can help parties confidently include arbitration clauses in their contracts, knowing that the agreement's validity will be upheld even if there are disputes about the main contract's validity or the timing of potential disputes.

In summary, Article 178(3) of the Swiss PILA safeguards the autonomy and validity of arbitration agreements by prohibiting challenges based on the invalidity of the main contract or the fact that the dispute has not yet arisen. This provision promotes predictability and stability in arbitration by preventing challenges that could undermine the arbitration process.

**(3) The provisions of this Chapter shall apply by analogy to an arbitration clause set out in a unilateral legal act or in articles of association.**

Article 178(4) of the Swiss Private International Law Act (PILA) addresses the application of the provisions in a specific chapter of the PILA to arbitration clauses found in unilateral legal acts or in articles of association. Let us analyse the content and implications of this provision:

1. **Extension of Chapter Provisions:** Article 178(4) extends the provisions of the chapter within the PILA to apply by analogy to arbitration clauses that are included in unilateral legal acts or in articles of association. This means that the legal principles and regulations outlined in the relevant chapter will be applied in a similar manner to these specific types of arbitration clauses.
2. **Arbitration Clauses in Unilateral Legal Acts:** Unilateral legal acts refer to legal actions undertaken by one party, such as a declaration, promise, or acceptance. In the context of arbitration, this could include instances where one party explicitly includes an arbitration clause in a unilateral act, thereby expressing their intent to resolve future disputes through arbitration.
3. **Arbitration Clauses in Articles of Association:** Articles of association typically outline the internal rules and regulations governing a company or organisation. In the context of Article 178(4), this provision acknowledges that arbitration clauses can be included within articles of association, outlining the method by which disputes related to the company will be resolved.
4. **Analogous Application:** The phrase “apply by analogy” means that the legal principles and rules intended for a certain situation are extended to apply to similar situations, even if not explicitly stated. In the context of Article 178(4), it implies that the provisions of the chapter that govern arbitration agreements will be applied in a comparable manner to arbitration clauses in unilateral legal acts and articles of association.
5. **Consistency and Uniformity:** By extending the chapter’s provisions to cover arbitration clauses in unilateral legal acts and articles of association, Article 178(4) aims to promote consistency and uniformity in the application of arbitration principles across various contractual contexts.
6. **Practical Implications:** This provision provides clarity and guidance for parties, practitioners, and arbitrators when dealing with arbitration clauses in unilateral legal acts or articles of association. It ensures that the legal framework for arbitration agreements is adaptable to different forms of contractual relationships.
7. **Reflecting Modern Business Practices:** Article 178(4) acknowledges the common practice of including arbitration clauses in various types of legal documents, such as articles of association or unilateral declarations. It ensures that parties’ choices for arbitration are respected regardless of the form they take.

In summary, Article 178(4) of the Swiss PILA extends the provisions of a specific chapter within the PILA to apply by analogy to arbitration clauses found in unilateral legal acts or in articles of association. This provision promotes consistency and predictability in the application of arbitration principles to different contractual contexts, reflecting modern business practices and accommodating parties’ choices for resolving disputes through arbitration.

#### IV. Arbitrators

##### Appointment and replacement

##### Art. 179

- (1) The arbitrators shall be appointed and replaced in accordance with the parties' agreement. Unless the parties have agreed otherwise, the arbitral tribunal shall consist of three arbitrators, whereby two of the arbitrators are appointed by each of the parties and the two arbitrators so appointed unanimously select the third arbitrator as the president of the tribunal.**

Article 179(1) of the Swiss Private International Law Act (PILA) deals with the appointment and composition of the arbitral tribunal in arbitration proceedings. Let us analyse the content and implications of this provision:

1. **Appointment of Arbitrators:** Article 179(1) stipulates that arbitrators must be appointed and replaced in accordance with the agreement between the parties involved in the arbitration. This emphasises the importance of party autonomy in choosing the individuals who will arbitrate their disputes.
2. **Default Composition:** The provision outlines the default composition of the arbitral tribunal when the parties have not explicitly agreed otherwise. In such cases, the tribunal is composed of three arbitrators.
3. **Composition of the Tribunal:** When a tribunal consists of three arbitrators, the process is as follows:
  - a. Each party appoints one arbitrator. This allows the parties to select arbitrators who they believe will represent their interests fairly.
  - b. The two arbitrators appointed by the parties then collaborate to unanimously select the third arbitrator, who will serve as the president of the tribunal.
4. **Preserving Balance and Neutrality:** The process outlined in Article 179(1) aims to achieve a balanced and neutral arbitral tribunal. By allowing each party to appoint one arbitrator and having these two arbitrators agree on the third, the provision helps ensure that the tribunal is not biased in favour of any particular party.
5. **Party Autonomy:** Article 179(1) reflects the principle of party autonomy, which is fundamental in arbitration. Parties are generally free to choose the arbitration procedure, including the selection of arbitrators. This provision allows parties to tailor the composition of the arbitral tribunal to their specific needs and preferences.
6. **Flexibility in Agreement:** The provision also emphasises the importance of the parties' agreement in determining the composition of the arbitral tribunal. Parties can agree to a different number of arbitrators or alternative methods for appointing them, if they wish.
7. **Practical Implications:** Parties entering into arbitration agreements should be aware of the default composition outlined in Article 179(1). They can choose to follow this default

arrangement or tailor their arbitration clause to specify the number of arbitrators and the appointment process.

8. Reflecting International Norms: The provision is consistent with international arbitration norms, which often emphasise the role of party-appointed arbitrators while ensuring the neutrality of the tribunal.

In summary, Article 179(1) of the Swiss PILA provides a default mechanism for the appointment and composition of the arbitral tribunal when the parties have not agreed otherwise. It emphasises the principles of party autonomy, neutrality, and balance, allowing parties to either follow the default arrangement or customise the composition of the tribunal based on their preferences and needs.

**(2) In the absence of an agreement or if the arbitrators cannot be appointed or replaced for other reasons, the matter may be referred to the state court at the seat of the arbitration. If the parties have not designated a seat or have merely agreed that the seat of the arbitration shall be in Switzerland, the state court first seized shall have jurisdiction.**

Article 179(2) of the Swiss Private International Law Act (PILA) deals with the appointment and composition of the arbitral tribunal in arbitration proceedings. Let us analyse the content and implications of this provision:

1. Appointment of Arbitrators: Article 179(2) stipulates that arbitrators must be appointed and replaced in accordance with the agreement between the parties involved in the arbitration. This emphasises the importance of party autonomy in choosing the individuals who will arbitrate their disputes.
2. Default Composition: The provision outlines the default composition of the arbitral tribunal when the parties have not explicitly agreed otherwise. In such cases, the tribunal is composed of three arbitrators.
3. Composition of the Tribunal: When a tribunal consists of three arbitrators, the process is as follows:
  - a. Each party appoints one arbitrator. This allows the parties to select arbitrators who they believe will represent their interests fairly.
  - b. The two arbitrators appointed by the parties then collaborate to unanimously select the third arbitrator, who will serve as the president of the tribunal.
4. Preserving Balance and Neutrality: The process outlined in Article 179(2) aims to achieve a balanced and neutral arbitral tribunal. By allowing each party to appoint one arbitrator and having these two arbitrators agree on the third, the provision helps ensure that the tribunal is not biased in favour of any particular party.
5. Party Autonomy: Article 179(2) reflects the principle of party autonomy, which is fundamental in arbitration. Parties are generally free to choose the arbitration procedure, including the selection of arbitrators. This provision allows parties to tailor the composition of the arbitral tribunal to their specific needs and preferences.

6. Flexibility in Agreement: The provision also emphasises the importance of the parties' agreement in determining the composition of the arbitral tribunal. Parties can agree to a different number of arbitrators or alternative methods for appointing them, if they wish.
7. Practical Implications: Parties entering into arbitration agreements should be aware of the default composition outlined in Article 179(2). They can choose to follow this default arrangement or tailor their arbitration clause to specify the number of arbitrators and the appointment process.
8. Reflecting International Norms: The provision is consistent with international arbitration norms, which often emphasise the role of party-appointed arbitrators while ensuring the neutrality of the tribunal.

In summary, Article 179(2) of the Swiss PILA provides a default mechanism for the appointment and composition of the arbitral tribunal when the parties have not agreed otherwise. It emphasises the principles of party autonomy, neutrality, and balance, allowing parties to either follow the default arrangement or customise the composition of the tribunal based on their preferences and needs.

**(3) If a state court is called upon to appoint or replace an arbitrator, it shall grant such request, unless a summary examination shows that no arbitration agreement exists between the parties.**

Article 179(3) of the Swiss Private International Law Act (PILA) addresses the role of a state court in appointing or replacing arbitrators when parties are unable to do so. Let us analyse the content and implications of this provision:

1. State Court's Role in Appointing or Replacing Arbitrators: Article 179(3) outlines the role of a state court when it is requested to appoint or replace an arbitrator. In situations where parties cannot agree on the appointment or replacement of arbitrators, they may seek the intervention of a state court to facilitate the process.
2. Guiding Principle: Presumption of Existence of Arbitration Agreement: The provision establishes a guiding principle for the state court's decision-making process. It states that the state court should grant the request for appointment or replacement of an arbitrator unless a summary examination shows that no arbitration agreement exists between the parties.
3. Presumption in Favour of Arbitration: Article 179(3) reflects a presumption in favour of arbitration. The state court starts with the presumption that an arbitration agreement exists between the parties. This presumption is important because it aligns with the pro-arbitration stance of international commercial law and ensures that the arbitration process is not unduly obstructed by formalities.
4. Summary Examination: The provision requires the state court to conduct a summary examination to determine whether an arbitration agreement exists. A summary examination is a preliminary and expedited review that is intended to quickly establish whether the essential elements of an arbitration agreement are present.



5. **Balancing Efficiency and Due Process:** Article 179(3) strikes a balance between efficiency and due process. While the state court is encouraged to intervene and facilitate the appointment or replacement of an arbitrator, it is also obligated to ensure that there is a valid arbitration agreement in place before taking action.
6. **Practical Implications:** Parties requesting the appointment or replacement of an arbitrator from a state court should be aware of the presumption in favour of arbitration established by Article 179(3). They should also be prepared to demonstrate the existence of an arbitration agreement if challenged during the summary examination.
7. **Encouraging Arbitration:** Article 179(3) encourages parties to resolve their disputes through arbitration by promoting a swift and efficient process for appointing or replacing arbitrators. It also ensures that the arbitration process is not unnecessarily hindered by disputes about the existence of an arbitration agreement.

In summary, Article 179(3) of the Swiss PILA establishes a presumption in favour of arbitration when a state court is asked to appoint or replace an arbitrator. The state court is directed to grant such requests unless a summary examination indicates that no valid arbitration agreement exists between the parties. This provision supports the efficiency and effectiveness of the arbitration process while maintaining the necessary safeguards for due process.

**(4) At the request of a party, the state court shall take the necessary action to constitute the arbitral tribunal if the parties or arbitrators fail to fulfil their obligations within 30 days of being called upon to do so.**

Article 179(4) of the Swiss Private International Law Act (PILA) addresses the role of a state court in constituting an arbitral tribunal when parties or arbitrators fail to fulfil their obligations to do so. Let us analyse the content and implications of this provision:

1. **Constituting the Arbitral Tribunal:** Article 179(4) deals with situations where parties or arbitrators fail to fulfil their obligations to constitute the arbitral tribunal. Constituting the tribunal refers to the process of establishing the panel of arbitrators that will hear and decide the dispute.
2. **State Court's Role:** The provision outlines the role of the state court in this context. If the parties or the appointed arbitrators do not fulfil their obligations to constitute the tribunal within 30 days of being called upon to do so, a party can request the state court to take the necessary action to constitute the arbitral tribunal.
3. **Ensuring Progress of Proceedings:** Article 179(4) aims to ensure that the arbitration proceedings move forward even when parties or arbitrators encounter delays or fail to fulfil their obligations. The provision prevents situations where the arbitration process is obstructed due to inaction or non-cooperation.
4. **Time Limit: 30 Days:** The provision establishes a specific time limit of 30 days within which the parties or arbitrators must fulfil their obligations to constitute the arbitral tribunal. If this deadline is not met, the requesting party can turn to the state court for assistance.

5. **Party Requested Action:** The state court's intervention is initiated by a party's request. If a party believes that the other party or the appointed arbitrators are not fulfilling their obligations, they can request the state court to take action. This emphasises the party's role in driving the process forward.
6. **Balancing Efficiency and Party Autonomy:** Article 179(4) aims to balance the efficiency of the arbitration process with the principle of party autonomy. While parties have autonomy in the arbitration process, the provision steps in to prevent undue delays or standstills in the proceedings.
7. **Practical Implications:** Parties and arbitrators should be mindful of their obligations and the timeframes outlined in Article 179(4). Delays in constituting the arbitral tribunal can have consequences, and if the parties or arbitrators do not act within the specified time, the state court may intervene.

In summary, Article 179(4) of the Swiss PILA empowers a party to request the state court to take action to constitute the arbitral tribunal if the parties or appointed arbitrators fail to fulfil their obligations within 30 days of being called upon to do so. This provision ensures that the arbitration process progresses efficiently and prevents unnecessary delays in the constitution of the arbitral tribunal.

**(5) In the case of a multi-party arbitration, the state court may appoint all arbitrators.**

Article 179(5) of the Swiss Private International Law Act (PILA) addresses the appointment of arbitrators in multi-party arbitrations. Let us analyse the content and implications of this provision:

1. **Multi-Party Arbitration:** Article 179(5) pertains to situations where there are multiple parties involved in the arbitration, commonly referred to as multi-party arbitrations. In such cases, disputes may involve more than two parties with potentially complex relationships and interests.
2. **State Court's Appointment Authority:** The provision grants authority to the state court to appoint all arbitrators in the case of a multi-party arbitration. This means that if the parties are unable to agree on the appointment of arbitrators themselves, the state court can take over the appointment process for all arbitrators.
3. **Addressing Challenges in Multi-Party Arbitrations:** Multi-party arbitrations can be challenging due to the involvement of numerous parties with varying interests and perspectives. Agreeing on the appointment of arbitrators can be particularly complex when there are several parties with potentially conflicting preferences.
4. **Efficiency and Neutrality:** Article 179(5) is designed to address efficiency and neutrality concerns in multi-party arbitrations. By allowing the state court to appoint all arbitrators, the provision aims to ensure that the arbitration process is not unduly delayed by disagreements among the parties.
5. **Protecting the Arbitration Process:** The provision contributes to the protection of the arbitration process by preventing potential deadlock situations that could arise from disputes among the multiple parties. It allows the proceedings to move forward while also ensuring that arbitrators are appointed in a neutral manner.

6. **Limitations on Party Autonomy:** While party autonomy is a fundamental principle in arbitration, Article 179(5) recognises that in certain situations, the involvement of multiple parties can complicate the appointment process. In such cases, the state court's role helps strike a balance between party autonomy and the need for an effective arbitration process.
7. **Practical Implications:** Parties involved in multi-party arbitrations should be aware of the state court's authority to appoint all arbitrators if they are unable to reach an agreement. This provision provides a mechanism to avoid delays and ensure the efficient progression of the arbitration.

In summary, Article 179(5) of the Swiss PILA empowers the state court to appoint all arbitrators in the case of a multi-party arbitration. This provision addresses the challenges of appointing arbitrators in complex multi-party disputes, aiming to ensure efficiency, neutrality, and the overall effectiveness of the arbitration process.

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

Article 179(6) of the Swiss Private International Law Act (PILA) addresses the obligation of a potential arbitrator to disclose any circumstances that may affect their independence or impartiality. Let us analyse the content and implications of this provision:

1. **Duty to Disclose:** Article 179(6) establishes a duty for a person who has been approached to serve as an arbitrator to promptly disclose any circumstances that might give rise to justifiable doubts regarding their independence or impartiality. In other words, if the potential arbitrator is aware of any factors that could affect their ability to act neutrally and independently, they are obligated to reveal those circumstances.
2. **Ensuring Independence and Impartiality:** The provision is designed to ensure the integrity of the arbitration process by maintaining the principles of independence and impartiality among arbitrators. These principles are critical to upholding the credibility of arbitration outcomes.
3. **Ongoing Obligation:** The duty to disclose is not a one-time requirement; it persists throughout the duration of the arbitration proceedings. This means that if new circumstances arise that could impact the arbitrator's independence or impartiality, they must continue to disclose such circumstances even after initially being appointed.
4. **Timely and Open Disclosure:** The requirement for "prompt" disclosure emphasises the importance of timely and open communication. Potential arbitrators are expected to promptly share any relevant information that could affect their ability to carry out their role in an unbiased manner.
5. **Maintaining Confidence in Arbitration:** Article 179(6) contributes to maintaining confidence in the arbitration process by ensuring that arbitrators are free from any actual or perceived conflicts of interest. It enhances transparency and encourages arbitrators to act ethically and responsibly.

6. **Protection against Bias and Conflicts:** The provision protects against situations where arbitrators might have hidden biases, relationships, or other circumstances that could potentially compromise their ability to render a fair and impartial decision.
7. **International Norms and Best Practices:** The requirement for arbitrators to disclose potential conflicts or bias is in line with international arbitration norms and best practices, promoting a high standard of ethics and professionalism.
8. **Practical Implications:** Potential arbitrators, as well as parties involved in arbitration proceedings, should be aware of the duty to disclose under Article 179(6). This requirement enhances transparency and helps parties make informed decisions about the composition of the arbitral tribunal.

In summary, Article 179(6) of the Swiss PILA mandates that a person approached to serve as an arbitrator must promptly disclose any circumstances that might raise doubts about their independence or impartiality. This ongoing duty to disclose is critical for maintaining the integrity of the arbitration process and upholding the principles of neutrality and fairness.

## Challenge

### Grounds

#### Art. 180

- (1) An arbitrator may be challenged:**
- (a) if that arbitrator does not meet the qualifications agreed upon by the parties;**
  - (b) if a ground for challenge exists under the arbitration rules agreed upon by the parties;**
  - (c) if circumstances exist that give rise to justifiable doubts as to that arbitrator's independence or impartiality.**

Article 180(1) of the Swiss Private International Law Act (PILA) outlines the grounds on which an arbitrator may be challenged in arbitration proceedings. Let us analyse the content and implications of this provision:

1. **Grounds for Challenging an Arbitrator:** Article 180(1) sets forth three main grounds on which an arbitrator may be challenged during arbitration proceedings. These grounds are related to the qualifications, agreed-upon arbitration rules, and the arbitrator's independence or impartiality.
2. **(a) Qualifications Not Met:** Subsection (a) allows for the challenge of an arbitrator if that arbitrator does not meet the qualifications agreed upon by the parties. This recognises the parties' right to define specific qualifications that arbitrators must possess. If an arbitrator lacks the agreed-upon qualifications, a challenge can be made.
3. **(b) Grounds from Agreed Arbitration Rules:** Subsection (b) permits the challenge of an arbitrator if there is a ground for challenge as provided under the arbitration rules that the

parties have agreed upon. Many international arbitration rules, institutional or ad hoc, provide specific grounds for challenging arbitrators based on certain factors, and this provision allows for the application of those rules.

4. (c) Independence and Impartiality Doubts: Subsection (c) allows for the challenge of an arbitrator if circumstances exist that give rise to justifiable doubts as to the arbitrator's independence or impartiality. This reflects the importance of maintaining the impartiality and neutrality of arbitrators throughout the proceedings.
5. Balancing Party Autonomy and Fairness: Article 180(1) seeks to balance the principle of party autonomy with the necessity of ensuring a fair and unbiased arbitration process. While parties have the autonomy to select arbitrators and define qualifications, this provision ensures that arbitrators' qualifications, adherence to agreed rules, and independence are scrutinised.
6. Preserving Confidence in the Process: Challenging arbitrators based on these grounds contributes to preserving the confidence of parties in the arbitration process. It enables parties to address concerns about arbitrators who may not meet the agreed-upon standards or whose impartiality is questioned.
7. Procedural Mechanism: It is important to note that this provision establishes the grounds for challenging an arbitrator, but the exact procedural details for initiating and resolving such challenges might be outlined in the arbitration rules chosen by the parties or in the applicable law.
8. Practical Implications: Parties involved in arbitration proceedings should be aware of the grounds for challenging an arbitrator outlined in Article 180(1). In case they have concerns about an arbitrator's qualifications, adherence to rules, or impartiality, they can consider these grounds as part of their decision-making process.

In summary, Article 180(1) of the Swiss PILA provides the grounds on which an arbitrator may be challenged during arbitration proceedings, including qualifications not met, grounds from agreed arbitration rules, and doubts about independence or impartiality. This provision balances party autonomy with the need for a fair arbitration process and contributes to maintaining confidence in the proceedings.

**(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.**

Article 180(2) of the Swiss Private International Law Act (PILA) addresses the circumstances under which a party can challenge an arbitrator whom it has appointed or participated in appointing. Let us analyse the content and implications of this provision:

1. Limited Grounds for Challenging Party-Appointed Arbitrators: Article 180(2) narrows down the grounds on which a party can challenge an arbitrator whom that party has appointed or participated in appointing. It restricts the ability to challenge to reasons that were not known to the party at the time of the appointment, despite exercising due diligence.

2. **Post-Appointment Discovery of Reasons:** The provision allows a party to challenge an arbitrator after their appointment only if the party discovers reasons for the challenge that were not known to them when the appointment was made. These reasons must have come to light despite the party's exercise of due diligence, indicating that the party could not have known about them earlier.
3. **Balancing Interests:** Article 180(2) balances the interests of parties with the need for stability in arbitration proceedings. It recognises that parties should not be allowed to challenge arbitrators arbitrarily after they have participated in their appointment. Instead, it only permits challenges based on new information that could not have been reasonably known earlier.
4. **Due Diligence Requirement:** The provision requires that the party exercise due diligence in uncovering any potential reasons for challenging the arbitrator. This means that a party must make reasonable efforts to investigate and identify any possible concerns about the appointed arbitrator's qualifications or independence.
5. **Protecting the Arbitration Process:** Article 180(2) aims to prevent parties from using the challenge mechanism as a means of strategic delay or manipulation. It ensures that parties can challenge an arbitrator they appointed or participated in appointing only when genuinely new information arises.
6. **Practical Implications:** Parties should be aware that challenging an arbitrator whom they have appointed or participated in appointing under Article 180(2) is limited to situations where new and unforeseen reasons for challenge are discovered after the appointment. This provision prevents parties from raising challenges based on information that was within their knowledge at the time of appointment.

In summary, Article 180(2) of the Swiss PILA permits a party to challenge an arbitrator they have appointed or participated in appointing only if new reasons for the challenge emerge after the appointment. The provision requires due diligence in uncovering these reasons and strikes a balance between party interests and the stability of the arbitration process.

## Procedure

### Art. 180a

- (1) Unless the parties have agreed otherwise and if the arbitral proceedings are not yet concluded, 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.**

Article 180a(1) of the Swiss Private International Law Act (PILA) outlines the procedural requirements for making a challenge to an arbitrator. Let us analyse the content and implications of this provision:

1. **Formal Request for Challenge:** Article 180a(1) sets out the procedure for making a formal request to challenge an arbitrator. This process is initiated by a party seeking to challenge an arbitrator based on grounds for challenge outlined in the law.



2. **Requirement of a Written Request:** The provision mandates that the request for challenge must be made in writing. This formal requirement ensures that challenges are properly documented and communicated in a clear and structured manner.
3. **Reasons for Challenge:** The requesting party is also required to provide reasons for the challenge. This means that the party must explain the specific grounds that warrant the arbitrator's removal. This transparency is crucial for ensuring the fairness and legitimacy of the challenge process.
4. **Timely Notification:** The requesting party must address the challenge to the challenged arbitrator and notify the other arbitrators within 30 days of becoming aware, or exercising due diligence ought to have become aware, of the grounds for challenge. This provision introduces a time constraint to ensure that challenges are raised promptly after discovering the grounds for challenge.
5. **Balance between Timeliness and Due Diligence:** Article 180a(1) reflects the principle of balancing timeliness with the need for due diligence. It recognises that parties should act promptly once they become aware of the grounds for challenge or should have reasonably known about them with the exercise of due diligence.
6. **Preserving Efficiency of Proceedings:** The provision's requirement for timely notification helps preserve the efficiency of arbitration proceedings. By ensuring that challenges are raised in a timely manner, unnecessary delays in the proceedings can be avoided.
7. **Exception for Agreed Procedures:** Article 180a(1) allows for exceptions if the parties have agreed on alternative procedures for challenging arbitrators. Parties can modify the procedural requirements if they agree to specific procedures in their arbitration agreement.
8. **Practical Implications:** Parties considering a challenge to an arbitrator should be aware of the formal requirements outlined in Article 180a(1), including the need for a written request, providing reasons, and adhering to the time limit of 30 days. Failing to comply with these requirements could impact the validity of the challenge.

In summary, Article 180a(1) of the Swiss PILA establishes the procedural framework for making a challenge to an arbitrator. It requires a written request with reasons and timely notification to the relevant parties within 30 days of the requesting party becoming aware or exercising due diligence. This provision ensures transparency, efficiency, and fairness in the challenge process.

**(2) The requesting party may, within 30 days of the submission of the request for challenge, challenge the arbitrator before the state court. The decision of the state court is final.**

Article 180a(2) of the Swiss Private International Law Act (PILA) addresses the process for challenging an arbitrator before a state court. Let us analyse the content and implications of this provision:

1. **State Court Challenge Mechanism:** Article 180a(2) introduces a mechanism for a party to challenge an arbitrator before a state court. This mechanism allows a party to seek judicial review of the challenge if it is not resolved within the arbitral proceedings.

2. **Timing of State Court Challenge:** The provision specifies that the requesting party has a window of 30 days, starting from the submission of the initial request for challenge, to bring the challenge before the state court. This time frame is important to ensure that challenges are addressed in a timely manner.
3. **Final Decision of the State Court:** The decision of the state court in response to the challenge is deemed final. This means that once the state court makes a decision on the challenge, that decision cannot be further appealed or reviewed by other courts. This finality contributes to the efficiency and conclusiveness of the challenge resolution process.
4. **Protecting the Arbitration Process:** Article 180a(2) balances the autonomy of the arbitration process with the availability of a judicial review mechanism. It recognises that while arbitration is meant to be self-contained, there should be a way to address challenges to arbitrators that are not resolved within the arbitral framework.
5. **Efficiency and Legal Certainty:** The finality of the state court decision ensures legal certainty and promotes the efficiency of the arbitration process. Parties can rely on the state court's determination without the risk of further delays due to additional rounds of litigation.
6. **Practical Implications:** Parties considering a challenge to an arbitrator should be aware of the opportunity to bring the challenge before a state court within the 30-day window specified in Article 180a(2). They should also understand that the state court's decision will be binding and final.

In summary, Article 180a(2) of the Swiss PILA establishes a process for challenging an arbitrator before a state court. Parties have 30 days from the submission of the initial challenge request to bring the challenge before the state court. The state court's decision on the challenge is final, contributing to the efficiency and conclusiveness of the challenge resolution process.

**(3) 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.**

Article 180a(3) of the Swiss Private International Law Act (PILA) addresses the situation in which a challenge to an arbitrator is ongoing. Let us analyse the content and implications of this provision:

1. **Challenge Procedure and Ongoing Arbitration:** Article 180a(3) outlines the interaction between a challenge procedure involving an arbitrator and the ongoing arbitration proceedings. It specifies how the arbitral tribunal should proceed while a challenge to an arbitrator is pending.
2. **Arbitral Tribunal's Authority During Challenge:** The provision acknowledges that, unless the parties have agreed otherwise, the arbitral tribunal retains the authority to proceed with the arbitration and render an award even while a challenge to an arbitrator is underway.
3. **Participation of the Challenged Arbitrator:** Importantly, Article 180a(3) allows the challenged arbitrator to continue participating in the proceedings while the challenge is being resolved. This means that the challenged arbitrator can still contribute to the

arbitration process, including the rendering of an award, unless otherwise agreed by the parties.

4. **Flexibility and Efficiency:** The provision reflects a balance between maintaining the progress and efficiency of the ongoing arbitration and addressing the challenge process. Allowing the challenged arbitrator to continue participating can prevent unnecessary delays in the proceedings.
5. **Party Autonomy and Agreed Procedures:** Article 180a(3) recognises party autonomy and the possibility of the parties agreeing to different procedures. Parties can agree in their arbitration agreement or otherwise to specific rules or conditions regarding the participation of a challenged arbitrator during the challenge process.
6. **Practical Implications:** Parties entering into arbitration agreements should be aware of the provisions in their chosen arbitration rules or agreements that address challenges to arbitrators. Understanding the implications of Article 180a(3) can help parties make informed decisions about the conduct of arbitration proceedings when a challenge is pending.

In summary, Article 180a(3) of the Swiss PILA allows an arbitral tribunal, unless the parties have agreed otherwise, to continue with the arbitration proceedings and render an award while a challenge to an arbitrator is ongoing. The challenged arbitrator can still participate in the proceedings during this time, contributing to the flexibility, efficiency, and progress of the arbitration process.

## Removal

### Art. 180b

#### **(1) Any arbitrator may be removed by agreement of the parties.**

Article 180b(1) of the Swiss Private International Law Act (PILA) addresses the possibility of removing an arbitrator by agreement of the parties. Let us analyse the content and implications of this provision:

1. **Arbitrator Removal by Party Agreement:** Article 180b(1) stipulates that any arbitrator may be removed from the arbitral tribunal if the parties agree to do so. This means that the parties, collectively, have the power to remove an arbitrator from their arbitral tribunal through mutual consent.
2. **Flexibility and Party Autonomy:** The provision reflects the principle of party autonomy in arbitration. It recognises that the parties involved in an arbitration have significant control over the composition and conduct of the arbitral tribunal, including the ability to agree on the removal of an arbitrator.
3. **Collaborative Resolution:** The removal of an arbitrator by party agreement can be seen as a collaborative approach to resolving disputes within the arbitral process. If the parties collectively decide that an arbitrator's presence is not conducive to a fair and efficient proceeding, they have the authority to address the situation.

4. **Efficient Dispute Resolution:** Article 180b(1) promotes the efficiency of the arbitration process by allowing parties to address concerns about an arbitrator’s role without resorting to lengthy and formal challenge procedures.
5. **Agreement Requirement:** It is important to note that the removal of an arbitrator by agreement of the parties requires unanimous consent or agreement among all parties involved in the arbitration. One party alone cannot unilaterally remove an arbitrator without the agreement of the other parties.
6. **Practical Implications:** Parties should consider Article 180b(1) when crafting their arbitration agreements or participating in arbitration proceedings. They should be aware that they have the authority to remove an arbitrator by mutual consent, but such an agreement should involve all parties to the arbitration.

In summary, Article 180b(1) of the Swiss PILA grants parties the authority to remove an arbitrator from the arbitral tribunal through mutual agreement. This provision aligns with the principle of party autonomy in arbitration and allows for a collaborative approach to addressing issues related to the composition of the arbitral tribunal.

**(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, to the state court for the arbitrator’s removal. The decision of the state court is final.**

Article 180b(2) of the Swiss Private International Law Act (PILA) addresses the circumstances under which a party can apply to the state court for the removal of an arbitrator who is unable to perform their duties effectively. Let us analyse the content and implications of this provision:

1. **Grounds for Arbitrator Removal:** Article 180b(2) establishes a ground for the removal of an arbitrator — when the arbitrator is unable to perform their duties within a reasonable time or with due diligence. This ground is based on the arbitrator’s inability to carry out their responsibilities effectively.
2. **State Court Involvement:** Unlike the provision in Article 180a(2) that deals with challenging arbitrators, Article 180b(2) involves the state court directly in the process of removing an arbitrator. If a party believes that an arbitrator’s inability to perform duties is affecting the arbitration, that party can seek the state court’s intervention.
3. **State Court Application:** The provision outlines the procedure for a party to seek the removal of an arbitrator. A written application with reasons must be submitted to the state court. The reasons provided should explain why the arbitrator’s inability to perform duties is detrimental to the arbitration process.
4. **State Court Decision:** The state court’s decision on the application for removal is considered final. This finality is consistent with the overall aim of arbitration to provide efficient and conclusive dispute resolution.
5. **Preserving the Arbitration Process:** Article 180b(2) reflects a concern for the integrity and effectiveness of the arbitration process. It provides a mechanism to address situations where an arbitrator’s inability to perform duties might hinder the arbitration proceedings.

6. Practical Implications: Parties should be aware of Article 180b(2) and the grounds for removal it outlines. If they believe that an arbitrator's inability to perform duties is affecting the arbitration, they can apply to the state court for the arbitrator's removal.

In summary, Article 180b(2) of the Swiss PILA allows a party to apply to the state court for the removal of an arbitrator who is unable to perform their duties within a reasonable time or with due diligence. The state court's decision on the removal application is final, reflecting the importance of preserving the effectiveness of the arbitration process.

## V. Lis pendens

### Art. 181

**The arbitral proceedings shall be pending from the time when a party submits a claim with the arbitrator or arbitrators designated in the arbitration agreement or, in the absence of such designation, from the time when a party initiates the procedure for the constitution of the arbitral tribunal.**

Article 181 of the Swiss Private International Law Act (PILA) outlines the commencement of arbitral proceedings and defines when such proceedings are considered to be pending. Let us analyse the content and implications of this provision:

1. Commencement of Arbitral Proceedings: Article 181 addresses the moment at which arbitral proceedings are officially initiated. The provision identifies two scenarios under which arbitral proceedings can be considered as pending:
  - a. Submission of a Claim with Designated Arbitrator(s): The first scenario involves the submission of a claim with the arbitrator(s) designated in the arbitration agreement. This means that when a party brings its claim before the designated arbitrator(s), the arbitral proceedings are considered to have commenced.
  - b. Initiation of Arbitral Tribunal Constitution Procedure: The second scenario pertains to situations where the arbitration agreement does not specify the arbitrator(s) or the arbitral tribunal's constitution procedure. In such cases, the arbitral proceedings are deemed to be pending from the time when a party initiates the procedure for the constitution of the arbitral tribunal. This refers to the process of selecting and appointing arbitrators.
2. Determining the Onset of Arbitral Proceedings: Article 181 clarifies the point at which the clock starts ticking for the arbitral proceedings. It establishes a clear framework for identifying the beginning of the arbitration process, which is crucial for procedural and jurisdictional purposes.
3. Party Autonomy and Flexibility: The provision recognises the principle of party autonomy in arbitration. Parties have the flexibility to choose either a designated arbitrator or an arbitration procedure to commence the proceedings. This flexibility accommodates the various ways parties may want to structure their arbitration.

4. **Clarity and Predictability:** Article 181 adds clarity and predictability to the commencement of arbitral proceedings. This clarity is essential for parties, arbitrators, and the arbitral institutions to understand when the arbitration process formally starts.
5. **Practical Implications:** Parties involved in arbitration proceedings, as well as arbitrators, should be aware of the conditions outlined in Article 181 for determining the commencement of arbitral proceedings. This clarity can help avoid disputes related to the timing of arbitration and ensure a smooth and organised process.

In summary, Article 181 of the Swiss PILA establishes the points at which arbitral proceedings are considered to be pending: the submission of a claim with designated arbitrator(s) or the initiation of the procedure for the constitution of the arbitral tribunal. This provision enhances clarity and predictability in the arbitration process and reflects the principle of party autonomy in structuring arbitration proceedings.

## VI. Procedure

### Principle

#### Art. 182

- (1) The parties may determine the arbitral procedure, directly or by reference to arbitration rules; they may also submit it to a procedural law of their choice.**

Article 182(1) of the Swiss Private International Law Act (PILA) addresses the flexibility of parties to determine the arbitral procedure in their arbitration agreement. Let us analyse the content and implications of this provision:

1. **Parties' Control Over the Arbitral Procedure:** Article 182(1) acknowledges and reinforces the principle of party autonomy in arbitration. It grants the parties the authority to shape and customise the arbitral procedure according to their preferences and needs.
2. **Options for Determining Arbitral Procedure:** The provision outlines three ways in which the parties can determine the arbitral procedure:
  - a. **Direct Determination:** Parties can directly specify the procedural steps, rules, and mechanisms that will govern the arbitration proceedings. This allows for a tailor-made procedure that aligns with the parties' specific circumstances.
  - b. **Reference to Arbitration Rules:** Parties can choose to incorporate established arbitration rules into their arbitration agreement. These rules, which can be developed by arbitral institutions or organisations, provide a predefined framework for conducting arbitration proceedings.
  - c. **Submission to Procedural Law:** Alternatively, parties can submit the arbitration procedure to a procedural law of their choice. This means that they adopt a specific national or international procedural law to govern their arbitration proceedings.



3. **Flexibility and Customisation:** Article 182(1) emphasises the flexibility and customisation available to parties in designing the arbitration process. This flexibility is one of the key advantages of arbitration compared to litigation in state courts, where procedural rules are often more rigid.
4. **Balancing Efficiency and Fairness:** While parties have significant latitude in determining the arbitral procedure, they should strike a balance between efficiency and fairness. An overly complex or time-consuming procedure could impact the efficiency of the arbitration process.
5. **Clarity and Agreement:** To ensure that the chosen arbitral procedure is effective and enforceable, it is important for the parties to clearly outline their intentions in their arbitration agreement. This clarity prevents potential disputes during the arbitration process.
6. **Practical Implications:** Parties entering into an arbitration agreement should carefully consider how they want the arbitral procedure to be conducted. They can choose between direct determination, reference to established rules, or submission to a chosen procedural law. The chosen approach should align with their dispute and the goals they want to achieve through arbitration.

In summary, Article 182(1) of the Swiss PILA affirms parties' authority to determine the arbitral procedure in their arbitration agreement. This provision reflects the principle of party autonomy and provides parties with options to customise the arbitration process according to their preferences and needs.

**(2) If the parties have not determined the procedure, the arbitral tribunal shall determine it to the extent necessary, either directly or by reference to a law or to arbitration rules.**

Article 182(2) of the Swiss Private International Law Act (PILA) addresses the situation in which the parties to an arbitration agreement have not specified the arbitral procedure. Let us analyse the content and implications of this provision:

1. **Default Procedure Determination by Arbitral Tribunal:** Article 182(2) outlines the role of the arbitral tribunal in determining the procedure to be followed when the parties have not specified the details of the arbitration procedure in their agreement.
2. **Parties' Lack of Specification:** In some cases, parties may not provide explicit instructions on the procedural aspects of the arbitration process in their agreement. This could be due to oversight, lack of detailed knowledge, or a desire to leave the procedural details to the discretion of the arbitral tribunal.
3. **Authority of the Arbitral Tribunal:** Article 182(2) grants authority to the arbitral tribunal to determine the procedural framework as needed. The tribunal can exercise this authority directly or by referring to relevant laws or established arbitration rules.
4. **Flexibility and Expertise:** The provision's intention is to provide flexibility in situations where the parties have not stipulated a procedure. The arbitral tribunal, being composed

of experienced professionals, is well-equipped to tailor the procedure to suit the nature of the dispute and the parties' needs.

5. **Balancing Procedural Efficiency and Fairness:** While determining the procedure, the arbitral tribunal should aim to strike a balance between procedural efficiency and the parties' right to a fair and equitable hearing. The chosen procedure should ensure that the parties have a reasonable opportunity to present their case and that the proceedings are conducted efficiently.
6. **Reference to Law or Rules:** Article 182(2) allows the arbitral tribunal to determine the procedure by referring to a law or established arbitration rules. This option ensures that the procedure chosen is consistent with recognised legal norms and standards.
7. **Practical Implications:** Parties entering into arbitration agreements should be aware of the possibility that the arbitral tribunal may need to determine the procedure in case they do not specify it themselves. Having a general understanding of potential procedural norms and the rules of well-known arbitral institutions can be helpful in such cases.

In summary, Article 182(2) of the Swiss PILA empowers the arbitral tribunal to determine the arbitral procedure when the parties have not specified it in their agreement. This provision enhances flexibility in the arbitration process and ensures that even in the absence of specific instructions, the arbitral tribunal can establish a fair and efficient procedure to resolve the dispute.

**(3) Regardless of the chosen procedure, the arbitral tribunal shall ensure equal treatment of the parties and their right to be heard in adversarial proceedings.**

Article 182(3) of the Swiss Private International Law Act (PILA) addresses the fundamental principles of equal treatment and the right to be heard in arbitration proceedings. Let us analyse the content and implications of this provision:

1. **Fundamental Principles of Fairness:** Article 182(3) emphasises two fundamental principles that are integral to any fair and just legal proceeding: equal treatment of the parties and their right to be heard.
2. **Equal Treatment of Parties:** The provision requires the arbitral tribunal to ensure equal treatment of the parties. This means that both parties should have an equal opportunity to present their case, submit evidence, and respond to arguments. The tribunal should avoid any bias or preferential treatment that could undermine the fairness of the proceedings.
3. **Right to Be Heard:** The right to be heard is a cornerstone of procedural fairness. It guarantees that each party has the opportunity to present their arguments and evidence and respond to those presented by the opposing party. This principle ensures that the tribunal considers all relevant information before making a decision.
4. **Adversarial Nature of Proceedings:** Article 182(3) explicitly references "adversarial proceedings", which is a hallmark of many legal systems. In adversarial proceedings, the parties present their arguments and evidence, and the tribunal acts as an impartial decision-maker based on the parties' presentations.

5. Application Regardless of Chosen Procedure: The provision's language, "regardless of the chosen procedure", indicates that these fundamental principles apply irrespective of whether the parties have specified the arbitral procedure in their agreement or if the tribunal has determined it under Article 182(2). These principles are considered universally applicable and essential for maintaining the integrity of arbitration.
6. Ensuring a Fair Process: Article 182(3) underscores the importance of ensuring that the arbitration process respects the principles of fairness and procedural justice. Parties should feel confident that their rights are respected and that their case is heard in an unbiased and impartial manner.
7. Practical Implications: Arbitral tribunals should be vigilant in adhering to the principles of equal treatment and the right to be heard throughout the arbitration process. They should provide ample opportunities for parties to present their case, respond to arguments, and submit evidence. This ensures that the final decision is based on a thorough and complete understanding of the dispute.

In summary, Article 182(3) of the Swiss PILA highlights the principles of equal treatment of parties and the right to be heard in adversarial proceedings, regardless of the chosen arbitration procedure. These principles are fundamental to maintaining fairness, transparency, and integrity in the arbitration process.

**(4) A party that proceeds with the arbitration without immediately raising an objection to a violation of procedural rules which it knew or, exercising due diligence, ought to have known, may not subsequently raise such objection.**

Article 182(4) of the Swiss Private International Law Act (PILA) addresses the principle of waiver in relation to objections to violations of procedural rules in arbitration proceedings. Let us analyse the content and implications of this provision:

1. Principle of Waiver: Article 182(4) introduces the concept of waiver in arbitration proceedings. Waiver means that a party voluntarily gives up or forfeits certain rights or claims due to its actions or omissions.
2. Objection to Procedural Violations: The provision specifically relates to situations where a party is aware of a violation of procedural rules during the arbitration proceedings. Despite being aware of the violation, the party does not immediately raise an objection.
3. Knowledge and Due Diligence: Article 182(4) emphasises that if a party knew about a violation of procedural rules or, exercising due diligence, ought to have known about it, and yet does not raise an objection at the time, that party is deemed to have waived its right to subsequently raise the objection.
4. Ensuring Procedural Fairness: The provision's intent is to encourage parties to promptly address any procedural violations they become aware of during the proceedings. By doing so, the parties ensure the procedural fairness and integrity of the arbitration process.

5. Preventing Strategic Behaviour: Article 182(4) prevents parties from intentionally withholding objections to procedural violations for strategic purposes. Parties cannot use the violation as a tactical tool and then later raise the issue to their advantage.
6. Balancing Interests: While the provision emphasises the importance of addressing procedural violations in a timely manner, it also recognises that parties may not always immediately recognise such violations. The due diligence standard accounts for situations where a party might need some time to assess whether a violation has occurred.
7. Practical Implications: Parties participating in arbitration proceedings should be aware of their obligation to raise objections to procedural violations promptly if they are aware of or should be aware of the violation through due diligence. Failing to do so could result in a waiver of the right to later raise the objection.

In summary, Article 182(4) of the Swiss PILA establishes the principle of waiver in arbitration proceedings. Parties that are aware of or should be aware of a violation of procedural rules must raise an objection promptly. If they fail to do so, they may waive their right to subsequently raise the objection, emphasising the importance of addressing procedural issues in a timely manner.

## Provisional and conservatory measures

### Art. 183

- (1) Unless the parties have agreed otherwise, the arbitral tribunal may, at the request of a party, order provisional or conservatory measures.**

Article 183(1) of the Swiss Private International Law Act (PILA) addresses the arbitral tribunal's authority to grant provisional or conservatory measures upon the request of a party. Let us analyse the content and implications of this provision:

1. Granting of Provisional or Conservatory Measures: Article 183(1) provides the arbitral tribunal with the power to issue provisional or conservatory measures. These measures are intended to address urgent situations that require immediate action to prevent harm, maintain the status quo, or protect the rights of parties before a final arbitral award is rendered.
2. Authority to Protect Interests: The provision reflects the tribunal's authority to take action to safeguard the interests of the parties involved in the arbitration proceedings. It allows the tribunal to ensure that parties are not unduly prejudiced while the arbitration is ongoing.
3. Request by a Party: The provision requires that the request for provisional or conservatory measures be initiated by a party to the arbitration. This means that the tribunal's power to grant such measures is triggered by the party's application for relief.
4. Flexibility in the Absence of Agreement: Article 183(1) notes that the tribunal's authority to order provisional or conservatory measures exists unless the parties have specifically agreed otherwise. This provision highlights the flexibility of arbitration and the ability of parties to tailor the process to their needs.

5. **Protecting Parties During Proceedings:** The provision acknowledges that disputes arising during the course of arbitration may require immediate attention. Provisional or conservatory measures can be essential to prevent the potential harm or deterioration of parties' rights while the arbitration process is ongoing.
6. **Potential Need for Judicial Assistance:** In some cases, the arbitral tribunal might need to rely on state courts to enforce provisional or conservatory measures, especially if they involve seizing assets or other forms of interference with parties' rights.
7. **Practical Implications:** Parties should be aware of their ability to seek provisional or conservatory measures from the arbitral tribunal when urgent circumstances arise. This can be particularly important when a party needs to prevent immediate harm or secure its position while the arbitration process is underway.

In summary, Article 183(1) of the Swiss PILA empowers the arbitral tribunal to order provisional or conservatory measures upon the request of a party, unless the parties have agreed otherwise. This provision ensures that parties can seek timely relief to protect their interests during the arbitration proceedings.

**(2) If the party concerned does not voluntarily comply with the measure so ordered, the arbitral tribunal or a party may request the assistance of the state court; such court shall apply its own law.**

Article 183(2) of the Swiss Private International Law Act (PILA) outlines the process to be followed when a party does not voluntarily comply with the provisional or conservatory measures ordered by the arbitral tribunal. Let us analyse the content and implications of this provision:

1. **Non-Compliance with Ordered Measures:** Article 183(2) addresses the scenario in which a party fails to voluntarily comply with the provisional or conservatory measures that the arbitral tribunal has ordered.
2. **Requesting State Court Assistance:** The provision allows either the arbitral tribunal or a party to request the assistance of a state court if a party does not comply with the ordered measures. The purpose of involving the state court is to enforce the tribunal's orders in cases of non-compliance.
3. **Application of State Court Law:** When the state court is asked to assist in enforcing the tribunal's measures, it is required to apply its own domestic law to the matter. This means that the state court will apply its own legal procedures and mechanisms to ensure compliance with the tribunal's orders.
4. **Interaction Between Arbitral Tribunal and State Court:** Article 183(2) establishes a coordinated approach between the arbitral tribunal and the state court. If a party fails to comply with the tribunal's measures, the tribunal can seek the state court's assistance in enforcing those measures through its domestic legal framework.
5. **Enforcement Mechanism:** The provision recognises the need for a mechanism to enforce the tribunal's measures when a party does not cooperate voluntarily. Involving the state

court ensures that parties respect the tribunal's orders and the overall integrity of the arbitration process.

6. **Practical Implications:** Parties and arbitral tribunals should be aware of the process outlined in Article 183(2) when seeking to enforce provisional or conservatory measures. If a party is not complying with ordered measures, the tribunal or the requesting party can turn to the state court for assistance in enforcing those measures.

In summary, Article 183(2) of the Swiss PILA establishes the process for enforcing provisional or conservatory measures ordered by the arbitral tribunal when a party does not voluntarily comply. The provision allows the tribunal or a party to seek the assistance of the state court, which will apply its own domestic law to enforce the tribunal's orders. This mechanism ensures that the tribunal's measures are effective and respected by the parties involved.

### **(3) The arbitral tribunal or the state court may make the order of provisional or conservatory measures conditional on the provision of appropriate security.**

Article 183(3) of the Swiss Private International Law Act (PILA) addresses the possibility of making the order of provisional or conservatory measures conditional upon the provision of appropriate security. Let us analyse the content and implications of this provision:

1. **Conditional Orders for Measures:** Article 183(3) establishes that both the arbitral tribunal and the state court have the authority to make orders for provisional or conservatory measures conditional upon the provision of appropriate security by the requesting party.
2. **Ensuring Accountability:** The provision's intention is to ensure that the party seeking provisional or conservatory measures provides some form of financial assurance, known as security, to guarantee that if the measures are granted and later found to be unjustified, the other party can be compensated for any damages or losses suffered as a result.
3. **Balancing Interests:** Conditional orders for security aim to strike a balance between the interests of the party seeking the measures and the interests of the party against whom the measures are directed. By requiring security, the provision seeks to prevent potential misuse of provisional or conservatory measures while safeguarding the rights of both parties.
4. **Preventing Abuse of Process:** Conditional orders for security help prevent parties from seeking unjustified measures solely to cause financial harm or inconvenience to the opposing party. Requiring security adds a level of accountability and discourages abuse of the procedural mechanism.
5. **Judicial and Arbitral Discretion:** Both the arbitral tribunal and the state court have the discretion to determine whether security should be required as a condition for granting the requested measures. This discretion allows for flexibility and takes into account the unique circumstances of each case.
6. **Practical Implications:** Parties seeking provisional or conservatory measures should be prepared to provide appropriate security if requested. The need for security will depend on



factors such as the nature of the measures, the potential impact on the opposing party, and the likelihood of success of the underlying claim.

In summary, Article 183(3) of the Swiss PILA allows both the arbitral tribunal and the state court to conditionally grant provisional or conservatory measures upon the provision of appropriate security by the requesting party. This provision aims to ensure accountability, prevent misuse of measures, and balance the interests of both parties in the arbitration proceedings.

## Taking of evidence

### Art. 184

#### (1) The arbitral tribunal shall conduct the taking of evidence itself.

Article 184(1) of the Swiss Private International Law Act (PILA) addresses the authority and responsibility of the arbitral tribunal in conducting the taking of evidence in arbitration proceedings. Let us analyse the content and implications of this provision:

1. **Responsibility for Taking Evidence:** Article 184(1) establishes that the primary responsibility for conducting the taking of evidence in arbitration proceedings lies with the arbitral tribunal itself. This means that the tribunal is responsible for managing and overseeing the collection and presentation of evidence relevant to the case.
2. **Tribunal's Active Role:** The provision reflects the tribunal's active role in managing the arbitration process. The tribunal is expected to take proactive steps to ensure that the evidence presented is relevant, appropriate, and complies with the procedural rules agreed upon by the parties.
3. **Flexibility in Evidence Gathering:** Arbitral tribunals have the flexibility to adopt various methods for taking evidence, including witness testimonies, documents, expert opinions, and site visits. This flexibility allows the tribunal to tailor the evidence-gathering process to the specific needs of the case.
4. **Ensuring Fairness and Efficiency:** By conducting the taking of evidence themselves, arbitral tribunals aim to ensure a fair and efficient resolution of the dispute. The tribunal can directly manage the timing, scope, and relevance of the evidence presented, thereby maintaining procedural balance and preventing delays.
5. **Party Participation:** While the tribunal takes the lead in managing evidence, parties have the right to present their case and contribute to the evidence-gathering process. Parties should be given the opportunity to submit relevant documents, present witnesses, and cross-examine opposing witnesses.
6. **Expertise of the Tribunal:** Arbitral tribunals typically consist of experienced professionals who have a deep understanding of the legal and technical aspects of the dispute. This expertise equips them to assess the quality and relevance of the evidence presented.
7. **Practical Implications:** Parties involved in arbitration should be prepared to participate actively in the evidence-gathering process and work collaboratively with the tribunal.

Understanding the tribunal's role in managing evidence helps parties present their case effectively.

In summary, Article 184(1) of the Swiss PILA empowers the arbitral tribunal to conduct the taking of evidence itself. This provision reflects the tribunal's active role in managing the evidence-gathering process to ensure fairness, efficiency, and a well-informed resolution of the dispute.

**(2) If the assistance of state judicial authorities is required for the taking of evidence, the arbitral tribunal, or a party with the consent of the arbitral tribunal, may request the assistance of the state court at the seat of the arbitration.**

Article 184(2) of the Swiss Private International Law Act (PILA) addresses the situation in which the assistance of state judicial authorities is required for the taking of evidence in arbitration proceedings. Let us analyse the content and implications of this provision:

1. **Requesting State Judicial Assistance:** Article 184(2) allows the arbitral tribunal or a party (with the consent of the tribunal) to request the assistance of state court authorities when the taking of evidence requires their involvement.
2. **Need for State Court Assistance:** There may be instances where certain evidence-gathering activities, such as compelling witness testimonies, ordering the production of documents, or executing search and seizure orders, require the authority of state court officials. In such cases, the tribunal may require state court assistance to carry out these tasks effectively.
3. **Coordinated Approach:** The provision establishes a coordinated approach between the arbitral tribunal and the state court. The tribunal can initiate the process or allow a party to do so with the tribunal's consent. This approach ensures that the state court's involvement is aligned with the arbitral proceedings.
4. **Seat of Arbitration:** The assistance of the state court is sought at the seat of the arbitration. The seat is the legal jurisdiction that governs the arbitration process and has the authority to provide support in executing certain actions requiring state court intervention.
5. **Consent of the Tribunal:** If a party seeks state court assistance, the consent of the arbitral tribunal is required. This ensures that the tribunal's control over the proceedings is maintained and that the state court's involvement aligns with the arbitration process.
6. **Ensuring Effective Evidence Gathering:** Article 184(2) recognises that some evidence-gathering tasks might be more effectively carried out by state court officials due to their enforcement powers. Seeking state court assistance ensures that the evidence-gathering process is executed accurately and efficiently.
7. **Practical Implications:** Parties and arbitral tribunals should be aware of the potential need for state court assistance in certain evidence-gathering activities. Coordinating with state court authorities can enhance the effectiveness of the arbitration process.

In summary, Article 184(2) of the Swiss PILA allows the arbitral tribunal or a party (with the tribunal's consent) to request the assistance of state court authorities when state court involvement is required

for the taking of evidence. This provision ensures a coordinated approach between the arbitral tribunal and state court to carry out evidence-gathering activities that necessitate state court intervention.

**(3) The state court shall apply its own law. Upon request, it may apply or consider other forms of procedure.**

Article 184(3) of the Swiss Private International Law Act (PILA) addresses the application of law by state court authorities when assisting in the taking of evidence in arbitration proceedings. Let us analyse the content and implications of this provision:

1. **Application of State Court Law:** Article 184(3) establishes that the state court, when assisting in the taking of evidence for arbitration proceedings, shall apply its own domestic law. This means that the state court will follow its own procedural rules and legal principles when executing evidence-gathering tasks.
2. **Ensuring Consistency with Domestic Law:** The provision ensures that the state court's involvement in evidence-gathering remains consistent with its own legal framework. This consistency helps maintain the integrity and validity of the evidence-gathering process.
3. **Flexibility in Procedure:** While the state court is expected to apply its own law, Article 184(3) also acknowledges that the state court, upon request, may consider other forms of procedure. This recognises the flexibility that might be needed to align state court involvement with the requirements of arbitration proceedings.
4. **Compatibility with Arbitration Process:** The provision's flexibility allows the state court to consider procedural adaptations that align with the arbitration process. While the state court's application of its own law is a fundamental principle, the possibility of considering other forms of procedure allows for practical adjustments when necessary.
5. **Cooperation with Arbitration:** Article 184(3) reflects a cooperative approach between the state court and the arbitration process. The state court's involvement is meant to assist and complement the arbitration proceedings, ensuring that the evidence-gathering process is carried out effectively and in accordance with legal norms.
6. **Practical Implications:** Parties seeking state court assistance for evidence gathering should be aware that the state court will apply its own domestic law in carrying out the requested tasks. Parties can also request adaptations to the procedure, if necessary, to align with the specific requirements of arbitration.

In summary, Article 184(3) of the Swiss PILA establishes that state court authorities, when assisting in the taking of evidence for arbitration proceedings, will apply their own law. However, the provision recognises the possibility of considering other forms of procedure upon request, maintaining a balance between adherence to domestic law and the flexibility needed for arbitration-related tasks.

## Other cases of judicial assistance

### Art. 185

**If any other judicial assistance is required, the state court at the seat of the arbitration shall have jurisdiction.**

Article 185 of the Swiss Private International Law Act (PILA) addresses the jurisdiction of the state court at the seat of the arbitration when additional judicial assistance is required beyond the scope of evidence taking. Let us analyse the content and implications of this provision:

1. **Scope of Judicial Assistance:** Article 185 specifies that if any other form of judicial assistance beyond evidence taking is required, the state court at the seat of the arbitration has jurisdiction to provide such assistance. This provision recognises that there may be instances where the arbitral tribunal or parties require additional assistance from the state court that goes beyond evidence gathering.
2. **Exclusive Jurisdiction:** The provision designates the state court at the seat of the arbitration as the competent authority to provide the necessary judicial assistance. This exclusive jurisdiction ensures that all matters related to the arbitration process, including additional assistance, are centralised within the jurisdiction where the arbitration is taking place.
3. **Nature of Additional Assistance:** “Any other judicial assistance” mentioned in Article 185 can encompass a wide range of matters beyond evidence taking. This could include issues related to procedural matters, enforcement of interim measures, appointment of experts, granting injunctions, and other forms of legal support required to facilitate the arbitration process.
4. **Seat of Arbitration’s Significance:** The provision highlights the significance of the seat of the arbitration as the legal jurisdiction that governs the arbitration process. It confirms that the state court of the seat of arbitration has the authority to provide all necessary support to ensure the effective conduct of the arbitration.
5. **Efficient Judicial Assistance:** By allowing the state court at the seat of the arbitration to provide additional judicial assistance, Article 185 aims to ensure that all legal matters related to the arbitration can be efficiently addressed within a unified legal framework.
6. **Practical Implications:** Parties engaged in arbitration should be aware that the state court at the seat of the arbitration is the competent authority to provide additional judicial assistance beyond evidence taking. This provision ensures that all forms of assistance needed for the arbitration process are accessible within the same jurisdiction.

In summary, Article 185 of the Swiss PILA establishes the jurisdiction of the state court at the seat of the arbitration to provide any other form of judicial assistance that may be required beyond evidence taking. This provision ensures efficient and comprehensive support for the arbitration process, encompassing a wide range of legal matters.

**Judicial assistance in support of foreign arbitrations****Art. 185a**

- (1) An arbitral tribunal sitting abroad or a party to a foreign arbitration may request the assistance of the state court at the place where a provisional or conservatory measure is to be enforced. Article 183(2) and (3) shall apply by analogy.**

Article 185a(1) of the Swiss Private International Law Act (PILA) addresses the situation in which an arbitral tribunal sitting abroad or a party to a foreign arbitration seeks assistance from the state court at the place where a provisional or conservatory measure is to be enforced. Let us analyse the content and implications of this provision:

1. **Cross-Border Assistance:** Article 185a(1) deals with scenarios where an arbitral tribunal situated in a foreign jurisdiction or a party involved in a foreign arbitration seeks the assistance of a state court located in another jurisdiction where a provisional or conservatory measure needs to be enforced.
2. **Request for Assistance:** The provision allows the arbitral tribunal or the party involved in the foreign arbitration to request assistance from the state court at the enforcement location. This assistance is typically needed for enforcing provisional or conservatory measures ordered by the arbitral tribunal.
3. **Reference to Article 183(2) and (3):** Article 185a(1) states that the provisions of Article 183(2) and (3) shall apply by analogy. This means that the procedures and principles outlined in Article 183(2) and (3) for requesting state court assistance in enforcing provisional or conservatory measures in domestic arbitration also apply in the cross-border context.
4. **Ensuring Effective Enforcement:** The provision acknowledges the potential need for parties involved in foreign arbitrations to have their provisional or conservatory measures enforced in different jurisdictions. By referencing Article 183(2) and (3), the provision ensures that the process for seeking state court assistance in enforcement is consistent, regardless of whether the arbitration is domestic or foreign.
5. **Streamlining Assistance:** Applying the principles of Article 183(2) and (3) by analogy helps streamline the process of seeking assistance from state courts, making it easier for parties involved in foreign arbitrations to navigate the enforcement process.
6. **Practical Implications:** Parties engaged in foreign arbitrations should be aware of their ability to request assistance from state courts in the jurisdiction where provisional or conservatory measures need to be enforced. The procedures outlined in Article 183(2) and (3) can guide them in seeking this assistance.

In summary, Article 185a(1) of the Swiss PILA enables an arbitral tribunal sitting abroad or a party to a foreign arbitration to seek assistance from the state court where a provisional or conservatory measure needs to be enforced. The provision ensures consistency with the principles outlined in Article 183(2) and (3), helping parties efficiently navigate the enforcement of measures across different jurisdictions.

- (2) An arbitral tribunal sitting abroad or, with the consent of the arbitral tribunal, a party to a foreign arbitration may request the assistance of the state court at the place where the taking of evidence is to be carried out. Article 184(2) and (3) shall apply by analogy.**

Article 185a(2) of the Swiss Private International Law Act (PILA) pertains to situations where an arbitral tribunal sitting abroad or a party involved in a foreign arbitration seeks assistance from the state court located at the place where the taking of evidence is to be carried out. Let us analyse the content and implications of this provision:

1. **Cross-Border Evidence Assistance:** Article 185a(2) addresses cases where an arbitral tribunal situated in a foreign jurisdiction or a party to a foreign arbitration seeks assistance from a state court in another jurisdiction where evidence needs to be gathered.
2. **Requesting Evidence Assistance:** This provision allows the arbitral tribunal or the party involved in the foreign arbitration to request the assistance of the state court where the evidence needs to be collected. The state court's assistance is often required for tasks such as compelling witnesses, ordering document production, or conducting other evidence-related activities.
3. **Consent for Party Request:** The provision further stipulates that the party can seek state court assistance for evidence gathering with the consent of the arbitral tribunal. This ensures that the tribunal's control over the proceedings is maintained and that the state court's involvement aligns with the arbitration process.
4. **Application of Article 184(2) and (3):** Similar to Article 185a(1), Article 185a(2) references the application of principles from the PILA regarding evidence-taking assistance, specifically Article 184(2) and (3). This indicates that the procedures for seeking state court assistance outlined in Article 184(2) and (3) apply by analogy in the cross-border context.
5. **Facilitating Evidence Collection:** The provision recognises the potential need for parties involved in foreign arbitrations to gather evidence in multiple jurisdictions. By referencing Article 184(2) and (3), the provision facilitates a consistent and coherent process for seeking state court assistance in evidence-taking matters.
6. **Practical Implications:** Parties engaged in foreign arbitrations should be aware of their ability to seek assistance from state courts in jurisdictions where evidence needs to be collected. With the consent of the arbitral tribunal, they can request assistance following the procedures outlined in Article 184(2) and (3).

In summary, Article 185a(2) of the Swiss PILA enables an arbitral tribunal sitting abroad or, with the tribunal's consent, a party to a foreign arbitration to seek assistance from the state court where evidence needs to be collected. The provision ensures uniformity by applying the principles of Article 184(2) and (3), allowing parties to effectively gather evidence in cross-border arbitration proceedings.



## VII. Jurisdiction

### Art. 186

#### (1) The arbitral tribunal shall decide on its own jurisdiction.

Article 186(1) of the Swiss Private International Law Act (PILA) addresses the authority and responsibility of the arbitral tribunal to decide on its own jurisdiction. Let us analyse the content and implications of this provision:

1. **Jurisdictional Decision:** Article 186(1) establishes that the arbitral tribunal has the power and responsibility to make decisions regarding its own jurisdiction. This provision grants the tribunal the authority to determine whether it has the competence to hear the dispute brought before it.
2. **Principle of Competence-Competence:** The principle of competence-competence is a fundamental concept in arbitration. It affirms that an arbitral tribunal has the initial authority to decide questions about its own jurisdiction, including challenges to its existence or validity.
3. **Self-Contained Jurisdiction:** Arbitral tribunals derive their jurisdiction from the arbitration agreement between the parties. They are considered self-contained bodies with the capacity to determine their own scope of authority and jurisdictional boundaries.
4. **Prima Facie Assessment:** The tribunal's determination of jurisdiction is often based on a prima facie assessment, meaning a preliminary evaluation of the evidence and arguments presented by the parties. This assessment helps the tribunal decide whether it has the authority to hear the case.
5. **Scope of Decision:** Article 186(1) pertains specifically to the tribunal's jurisdiction. It does not address the merits of the dispute itself, but rather focuses on the question of whether the tribunal has the legal authority to proceed with the arbitration process.
6. **Principle of Finality:** The decision made by the arbitral tribunal regarding its own jurisdiction is generally final and not subject to appeal, ensuring efficiency and avoiding delays in the arbitration process.
7. **Judicial Review:** In some cases, a party may challenge the tribunal's jurisdiction in court, which is known as "negative jurisdictional review". However, such court intervention is typically limited, and courts generally uphold the principle of competence-competence.
8. **Practical Implications:** Parties entering into arbitration agreements should understand that the arbitral tribunal has the authority to determine its own jurisdiction. Challenges to the tribunal's jurisdiction are usually addressed within the arbitration process itself, subject to limited judicial review.

In summary, Article 186(1) of the Swiss PILA emphasises the principle of competence-competence, giving the arbitral tribunal the power to decide on its own jurisdiction. This provision upholds the autonomy of arbitral tribunals and ensures that they have the authority to determine whether they are competent to hear the dispute presented before them.

**(1bis) It shall decide on its jurisdiction notwithstanding any pending action before a state court or another arbitral tribunal on the same subject-matter between the same parties, unless there are substantial reasons to stay the proceedings.**

Article 186(1bis) of the Swiss Private International Law Act (PILA) addresses the arbitral tribunal's authority to decide on its own jurisdiction when there are concurrent proceedings before a state court or another arbitral tribunal on the same subject-matter between the same parties. Let us analyse the content and implications of this provision:

1. **Exclusive Jurisdiction over Jurisdictional Challenges:** Article 186(1bis) affirms that the arbitral tribunal has the power to determine its jurisdiction, even when there are ongoing actions before a state court or another arbitral tribunal involving the same parties and subject-matter. This provision reinforces the principle of competence-competence, emphasising that jurisdictional challenges are within the purview of the arbitral tribunal.
2. **Avoiding Parallel Proceedings:** The provision seeks to prevent the occurrence of parallel proceedings in multiple forums addressing the same jurisdictional issue. By asserting the tribunal's authority, the provision aims to streamline the resolution of jurisdictional matters within the arbitration process.
3. **Judicial or Arbitral Proceedings Elsewhere:** Article 186(1bis) acknowledges that while there may be ongoing judicial or arbitral proceedings elsewhere, the arbitral tribunal retains the discretion to decide on its jurisdiction. This allows the tribunal to ensure consistency and coherence in addressing jurisdictional challenges.
4. **Substantial Reasons for Stay:** While the default stance is that the arbitral tribunal will proceed with deciding its jurisdiction, Article 186(1bis) acknowledges that there may be circumstances warranting a stay of the proceedings. The provision requires substantial reasons to justify a stay, indicating that such reasons must be compelling to warrant a delay in the tribunal's jurisdictional decision.
5. **Ensuring Efficiency and Finality:** The provision aims to maintain efficiency in the arbitration process by having the tribunal address jurisdictional challenges. By preventing parallel proceedings, it also promotes finality and prevents conflicting decisions on jurisdiction from different fora.
6. **Practical Implications:** Parties involved in arbitration should be aware that the arbitral tribunal retains the authority to decide on its jurisdiction even in the presence of concurrent proceedings in other forums. The provision emphasises the tribunal's autonomy in handling jurisdictional matters, while allowing for a potential stay of proceedings in exceptional cases.

In summary, Article 186(1bis) of the Swiss PILA reaffirms the arbitral tribunal's authority to decide on its jurisdiction, even in the presence of ongoing actions before other forums on the same subject-matter between the same parties. The provision aims to prevent parallel proceedings, maintain efficiency, and uphold the principle of competence-competence in arbitration.

## **(2) Any plea of lack of jurisdiction must be raised prior to any defence on the merits.**

Article 186(2) of the Swiss Private International Law Act (PILA) addresses the timing and requirement for raising a plea of lack of jurisdiction in arbitration proceedings. Let us analyse the content and implications of this provision:

1. **Timing of Jurisdictional Challenge:** Article 186(2) establishes that any plea of lack of jurisdiction must be raised prior to raising any defence on the merits of the case. In other words, if a party wishes to challenge the tribunal's jurisdiction over the dispute, it must do so before addressing the substantive issues of the case.
2. **Ensuring Orderly Proceedings:** The provision aims to maintain orderly proceedings and prevent unnecessary delays by requiring parties to address jurisdictional challenges at an early stage of the arbitration process. This prevents jurisdictional objections from being raised as a delaying tactic after substantive issues have been thoroughly argued.
3. **Efficiency and Judicial Economy:** By requiring jurisdictional challenges to be raised before addressing the merits of the case, Article 186(2) contributes to the efficiency of the arbitration process. It allows the tribunal to address jurisdictional issues promptly, without disrupting the flow of the proceedings once they are underway.
4. **Encouraging Timely Resolution:** The provision encourages parties to promptly address jurisdictional matters, thereby allowing for a more focused and expedient resolution of such challenges. This supports the principle of resolving procedural matters in a timely manner.
5. **Principle of Finality:** Once a tribunal has ruled on its own jurisdiction, parties can move forward with confidence, knowing that the jurisdictional issue has been settled. This contributes to the finality of the arbitral process and ensures that parties can devote their efforts to addressing the substantive merits of the dispute.
6. **Practical Implications:** Parties engaging in arbitration should be aware of the requirement to raise any jurisdictional challenge before addressing the substantive merits of the case. Failure to do so may result in the challenge being deemed waived, and the tribunal proceeding with the case on the merits.

In summary, Article 186(2) of the Swiss PILA mandates that any plea of lack of jurisdiction must be raised prior to any defence on the merits of the case. This provision emphasises the importance of addressing jurisdictional challenges early in the arbitration process to ensure efficiency, judicial economy, and a timely resolution of procedural matters.

## **(3) The arbitral tribunal shall, in general, decide on its jurisdiction by means of a preliminary award.**

Article 186(3) of the Swiss Private International Law Act (PILA) addresses the manner in which arbitral tribunals typically decide on their jurisdiction. Let us analyse the content and implications of this provision:

1. **Jurisdictional Determination:** Article 186(3) states that, in general, the arbitral tribunal decides on its jurisdiction by means of a preliminary award. This means that the tribunal makes a formal decision regarding whether it has jurisdiction to hear the case.
2. **Preliminary Award:** A preliminary award is an interim decision made by the arbitral tribunal on a specific issue within the arbitration proceedings. In this context, it pertains to the tribunal's determination of its jurisdiction.
3. **Separation of Jurisdictional and Merits Issues:** The provision reinforces the importance of separating jurisdictional issues from the merits of the case. By deciding jurisdiction through a preliminary award, the tribunal ensures that the jurisdictional question is addressed independently before delving into the substantive aspects of the dispute.
4. **Efficiency and Clarity:** Deciding jurisdiction through a preliminary award contributes to the efficiency and clarity of the arbitration process. It allows parties to understand the tribunal's stance on jurisdiction at an early stage, which can help guide the subsequent course of the proceedings.
5. **Facilitating Challenges and Appeals:** A preliminary award on jurisdiction also provides a clear basis for parties to challenge the tribunal's jurisdiction if necessary. If a party believes the tribunal's decision on jurisdiction is incorrect, they can address the issue promptly, potentially avoiding jurisdictional disputes later in the process.
6. **Adapting to Specific Cases:** While the provision states that tribunals "shall, in general, decide on its jurisdiction by means of a preliminary award", it allows for flexibility in exceptional cases where a different approach might be more appropriate based on the circumstances.
7. **Practical Implications:** Parties entering arbitration should anticipate that the tribunal's jurisdictional decision is likely to be made through a preliminary award. This underscores the importance of addressing jurisdictional challenges early in the process and the significance of the tribunal's initial determination.

In summary, Article 186(3) of the Swiss PILA establishes that, in general, the arbitral tribunal decides on its jurisdiction through a preliminary award. This approach emphasises the separation of jurisdictional and merits issues, promotes efficiency, and provides clarity for both parties and the tribunal in the arbitration process.

## VIII. Arbitral award

### Applicable law

#### Art. 187

- (1) The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence thereof, according to the rules of law with which the dispute has the closest connection.**

Article 187(1) of the Swiss Private International Law Act (PILA) outlines the principles that guide how the arbitral tribunal should decide the substance of the dispute. Let us analyse the content and implications of this provision:

1. **Choice of Applicable Law:** Article 187(1) addresses the choice of law that the arbitral tribunal should apply in deciding the substance of the dispute. It recognises the importance of determining which legal rules will govern the resolution of the parties' claims.
2. **Parties' Choice of Law:** The provision highlights that the arbitral tribunal should first look to any explicit choice of law made by the parties in their arbitration agreement or other relevant agreements. If the parties have expressly chosen a specific body of law to govern their dispute, the tribunal should apply that chosen law.
3. **Absence of Choice of Law:** If the parties have not made a specific choice of law, Article 187(1) guides the arbitral tribunal to determine the applicable law based on the rules of law with which the dispute has the closest connection. This principle helps ensure that the decision-making process is fair and coherent, taking into account the parties' circumstances and the nature of the dispute.
4. **Connecting Factors:** The "closest connection" principle involves assessing various connecting factors, such as the place of performance of contractual obligations, the location of the parties, the subject matter of the dispute, and other relevant circumstances. The tribunal should consider these factors to determine which legal system is most closely related to the dispute.
5. **Flexibility and Fairness:** Article 187(1) provides a flexible approach that allows the tribunal to determine the applicable law based on the specific circumstances of the case. This approach promotes fairness by ensuring that the governing law is aligned with the core elements of the dispute.
6. **Consistency with International Arbitration Principles:** The principle of applying the law chosen by the parties or the law with the closest connection is consistent with international arbitration practices. It ensures predictability and supports the principle that parties should have a say in determining the legal framework governing their disputes.
7. **Practical Implications:** Parties involved in arbitration should consider specifying the governing law in their arbitration agreement or other relevant contracts to provide clarity on the applicable legal framework. If they do not choose a law explicitly, they should be aware that the tribunal will determine the governing law based on the closest connection principle.

In summary, Article 187(1) of the Swiss PILA directs the arbitral tribunal to decide the substance of the dispute according to the rules of law chosen by the parties or, in the absence of such choice, according to the rules of law with which the dispute has the closest connection. This provision ensures that the applicable legal framework is determined fairly and consistently, taking into account the parties' intentions and the nature of the dispute.

## **(2) The parties may authorise the arbitral tribunal to decide ex aequo et bono.**

Article 187(2) of the Swiss Private International Law Act (PILA) addresses the parties' ability to authorise the arbitral tribunal to decide the dispute "ex aequo et bono". Let us analyse the content and implications of this provision:

1. **Ex Aequo et Bono Principle:** "Ex aequo et bono" is a Latin term that translates to "according to what is just and fair". When an arbitral tribunal is authorised to decide ex aequo et bono, it means the tribunal has the discretion to determine the outcome of the dispute based on principles of fairness and equity rather than strict application of legal rules.
2. **Parties' Authorisation:** Article 187(2) stipulates that the parties have the authority to grant the arbitral tribunal the power to decide the dispute using the ex aequo et bono approach. This decision typically occurs either through the arbitration agreement or by subsequent agreement during the course of the proceedings.
3. **Departure from Strict Legal Rules:** When the arbitral tribunal decides ex aequo et bono, it is not bound by strict legal rules, precedents, or established legal principles. Instead, the tribunal has more latitude to consider broader concepts of justice and fairness in reaching its decision.
4. **Flexibility and Customisation:** Granting the tribunal the authority to decide ex aequo et bono provides flexibility to tailor the decision to the specific circumstances of the case. This can be particularly useful when the application of legal rules might not lead to a just outcome.
5. **Applicability:** Ex aequo et bono decisions are not common in commercial arbitrations, where parties often prefer the predictability of legal rules. However, it may be more relevant in certain contexts, such as disputes involving international trade, cultural differences, or cases where strict legal rules may not adequately address the complexities of the dispute.
6. **Caution and Consensus:** Parties should carefully consider whether to authorise the tribunal to decide ex aequo et bono. This approach requires a high degree of consensus between the parties and the tribunal and may lead to outcomes that depart from traditional legal norms.
7. **Practical Implications:** Parties should clearly communicate their intentions regarding the applicable decision-making approach in their arbitration agreement. If parties choose to authorise the tribunal to decide ex aequo et bono, they should be prepared for a more flexible, discretionary, and equitable decision-making process.

In summary, Article 187(2) of the Swiss PILA allows parties to authorise the arbitral tribunal to decide *ex aequo et bono*, based on principles of fairness and equity rather than strict legal rules. This provision provides parties with the flexibility to opt for a less rigid decision-making approach, but it requires careful consideration and consensus between the parties and the tribunal.

## Partial award

### Art. 188

**Unless the parties have agreed otherwise, the arbitral tribunal may render partial awards.**

Article 188 of the Swiss Private International Law Act (PILA) addresses the ability of an arbitral tribunal to render partial awards in arbitration proceedings. Let us analyse the content and implications of this provision:

1. **Partial Awards:** Article 188 establishes that, unless the parties have agreed otherwise, the arbitral tribunal has the authority to render partial awards. A partial award is an arbitral award that addresses only a specific part or issue of the dispute rather than the entire case.
2. **Discretion of the Tribunal:** This provision recognises the tribunal's discretion to issue partial awards when it deems it appropriate based on the nature of the dispute. The tribunal can choose to address certain issues separately, potentially leading to more efficient resolution and allowing the parties to move forward on specific aspects of the case.
3. **Advantages of Partial Awards:** Partial awards offer several advantages, including:
  - a. **Efficiency:** Addressing discrete issues through partial awards can streamline the arbitration process, particularly in complex cases with multiple distinct issues.
  - b. **Immediate Resolution:** Parties can receive a resolution on specific issues sooner, even if the overall case is not fully concluded.
  - c. **Focus on Core Disputes:** The tribunal can focus on the core or pivotal issues in the dispute, potentially leading to more comprehensive and targeted decisions.
4. **Applicability and Agreement:** Article 188 specifies that the tribunal's authority to render partial awards is subject to any agreement to the contrary between the parties. If the parties have agreed in advance that the tribunal cannot issue partial awards, then the tribunal's discretion is limited accordingly.
5. **Customisation and Flexibility:** By allowing parties to agree on whether partial awards can be rendered, Article 188 provides flexibility for parties to tailor the arbitration process to their needs and preferences.
6. **Practical Considerations:** Parties entering into arbitration should consider whether they want to allow for the possibility of partial awards or whether they prefer to have the tribunal issue a single comprehensive award at the conclusion of the proceedings. This decision may depend on the nature of the dispute, the complexity of the issues, and the parties' preferences.



In summary, Article 188 of the Swiss PILA grants the arbitral tribunal the discretion to render partial awards, addressing specific parts or issues of the dispute unless the parties have agreed otherwise. This provision offers flexibility and efficiency in the arbitration process, allowing for tailored decision-making based on the nature and complexity of the issues at hand.

## Procedure and form

### Art. 189

#### **(1) The award shall be rendered in conformity with the rules of procedure and in the form agreed upon by the parties.**

Article 189(1) of the Swiss Private International Law Act (PILA) pertains to the requirements for rendering an arbitral award. Let us analyse the content and implications of this provision:

1. **Conformity with Rules of Procedure:** Article 189(1) states that the arbitral award must be rendered in conformity with the rules of procedure. This means that the award must adhere to the procedural framework that the parties have agreed upon, whether explicitly in the arbitration agreement or subsequently in procedural rules adopted during the arbitration process.
2. **Respect for Agreed Form:** The provision emphasises that the award must also be rendered in the form agreed upon by the parties. This form may encompass various aspects, including the structure of the award, the language of the award, the manner in which evidence is presented, and any specific requirements for the award's issuance.
3. **Party Autonomy:** Article 189(1) underscores the principle of party autonomy in arbitration. It acknowledges that parties have the freedom to establish their own rules of procedure and determine the form and content of the award. This autonomy allows parties to tailor the arbitration process to their needs and preferences.
4. **Certainty and Predictability:** By requiring adherence to agreed-upon rules and form, the provision contributes to the certainty and predictability of the arbitration process. It ensures that both parties are treated fairly and that the award is issued in a manner consistent with the parties' intentions.
5. **Ensuring Enforceability:** An arbitral award's enforceability may be affected if it does not comply with the rules and form agreed upon by the parties. Ensuring that the award conforms to these requirements can contribute to the enforceability of the award in domestic and international contexts.
6. **Practical Implications:** Parties entering into arbitration agreements should carefully consider the rules of procedure and the form in which they want the arbitral award to be rendered. Clear and detailed agreements on these matters can help avoid disputes and uncertainties during the arbitration process and enhance the enforceability of the final award.

In summary, Article 189(1) of the Swiss PILA stipulates that an arbitral award must be rendered in conformity with the rules of procedure and in the form agreed upon by the parties. This provision

reflects the principle of party autonomy, contributes to certainty in arbitration proceedings, and supports the enforceability of the final award.

**(2) In the absence of such agreement, the award shall be made by a majority decision or, in the absence of a majority, by the presiding arbitrator alone. The award shall be made in writing, with reasons, dated and signed. The signature of the presiding arbitrator is sufficient.**

Article 189(2) of the Swiss Private International Law Act (PILA) addresses the requirements for rendering an arbitral award in the absence of specific agreement between the parties. Let us analyse the content and implications of this provision:

1. **Majority Decision or Presiding Arbitrator:** When the parties have not agreed on a specific procedure for rendering the award, Article 189(2) provides a default mechanism. The award is to be made by a majority decision of the arbitral tribunal, if a majority exists among the arbitrators. If no majority exists, the award can be made by the presiding arbitrator alone.
2. **Consensus and Efficiency:** The provision prioritises consensus and efficiency in the decision-making process. If a majority of arbitrators can agree on the outcome, they can proceed to render the award collectively. If a majority cannot be achieved, the presiding arbitrator—who typically holds a leadership role—can make the decision to ensure that the proceedings move forward.
3. **Written Award with Reasons:** Article 189(2) emphasises that the award must be made in writing and include reasons for the decision. This requirement is crucial for transparency, ensuring that the parties understand the basis for the tribunal’s decision.
4. **Dating and Signature:** The provision also mandates that the award be dated and signed. The requirement for the signature of the presiding arbitrator is sufficient. This signature signifies the finality of the decision and authenticates the award.
5. **Default Procedure:** Article 189(2) serves as a default procedure for rendering the award when the parties have not agreed on specific rules. However, it is advisable for parties to include detailed procedural rules in their arbitration agreement to avoid uncertainties and potential disputes.
6. **Practical Implications:** Parties entering into arbitration agreements should carefully consider the procedural rules for rendering the award. While Article 189(2) provides a default mechanism, parties can enhance the efficiency and clarity of the arbitration process by specifying the decision-making process and other relevant aspects in their agreement.

In summary, Article 189(2) of the Swiss PILA outlines the default procedure for rendering an arbitral award in the absence of an agreement between the parties. The provision emphasises a majority decision by the tribunal or a decision by the presiding arbitrator, along with the requirement for a written award with reasons and appropriate dating and signature. While this default mechanism is available, parties are encouraged to define their own procedural rules to ensure clarity and efficiency in the arbitration process.

**Correction and interpretation of the award; and supplemental award****Art. 189a**

- (1) Unless the parties have agreed otherwise, either party may, within 30 days of the notification of the award, request the arbitral tribunal to correct any clerical or computational errors in the award, to interpret certain parts of the award or to issue a supplement to the award on claims which were raised in the arbitral proceedings but not dealt with in the award. Within the same time limit, the arbitral tribunal may, on its own initiative, correct, interpret or supplement the award.**

Article 189a(1) of the Swiss Private International Law Act (PILA) deals with the correction, interpretation, and supplementation of arbitral awards. Let us analyse the content and implications of this provision:

1. **Correction of Errors:** Article 189a(1) allows either party, within 30 days of the notification of the award, to request the arbitral tribunal to correct any clerical or computational errors in the award. These errors could be typographical, numerical, or other unintentional mistakes that do not involve substantive issues.
2. **Interpretation of Award:** Additionally, within the same 30-day time frame, either party can request the tribunal to interpret certain parts of the award. This provision recognises that there might be instances where parts of the award are unclear or require further explanation.
3. **Supplement to the Award:** A party can also request a supplement to the award on claims that were raised in the arbitral proceedings but were not addressed in the original award. This allows the tribunal to rectify situations where certain claims were inadvertently omitted from the initial award.
4. **Initiative by the Tribunal:** Importantly, Article 189a(1) also grants the arbitral tribunal the authority to take the initiative to correct, interpret, or supplement the award on its own within the same 30-day time limit. This ensures that the tribunal has the power to rectify any issues it identifies without being solely dependent on party requests.
5. **Time Limit:** The 30-day time limit following the notification of the award is designed to ensure that any necessary corrections, interpretations, or supplements are made promptly after the award is issued.
6. **Flexibility and Procedural Fairness:** Article 189a(1) strikes a balance between allowing parties to correct minor errors and seek clarifications while ensuring that the finality of the award is maintained. This provision aims to enhance the procedural fairness of the arbitration process.
7. **Practical Implications:** Parties should be aware of their rights and obligations regarding the correction, interpretation, and supplementation of awards as outlined in Article 189a(1). Timely action is essential to take advantage of the 30-day window for requesting corrections or seeking interpretations.

In summary, Article 189a(1) of the Swiss PILA provides a mechanism for correcting clerical or computational errors, interpreting parts of the award, and supplementing the award on claims not

addressed. The provision acknowledges both party and tribunal initiatives for these actions, contributing to the accuracy and completeness of arbitral awards while maintaining procedural fairness.

**(2) 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.**

Article 189a(2) of the Swiss Private International Law Act (PILA) pertains to the effects of requests for correction, interpretation, or supplementation of arbitral awards on the time limits for recourse against the award. Let us analyse the content and implications of this provision:

1. **No Suspension of Time Limits:** Article 189a(2) specifies that a request for the correction, interpretation, or supplementation of an arbitral award does not suspend the time limits for recourse against the award. This means that the clock for challenging or appealing the award continues to run despite the request being made.
2. **Time Limit for Recourse Restart:** The provision further states that if a part of the award is corrected, interpreted, or supplemented, the time limit for recourse against that specific part of the award starts anew. This ensures that parties have a fresh opportunity to challenge or appeal the award based on the revised content.
3. **Protection of Finality:** By not suspending the time limits for recourse, Article 189a(2) aims to protect the finality and efficiency of the arbitration process. The provision encourages parties to pursue correction, interpretation, or supplementation swiftly while maintaining the overall timeline for challenging an award.
4. **Balanced Approach:** The provision balances the interests of ensuring that parties have the ability to address issues with the award while also maintaining the stability of the arbitration process and the enforceability of arbitral awards.
5. **Importance of Timely Action:** Parties must be mindful of the time limits for recourse against arbitral awards, even when seeking correction, interpretation, or supplementation. If they believe that part of the award requires attention, they need to act promptly to avoid missing the opportunity to challenge or appeal the award within the prescribed time limits.
6. **Practical Implications:** Parties seeking correction, interpretation, or supplementation of an arbitral award under Article 189a(1) should be aware that their actions do not extend the time limits for challenging or appealing the award. Moreover, if the requested action results in a change to a specific part of the award, parties will have a fresh time limit to address that revised portion.

In summary, Article 189a(2) of the Swiss PILA clarifies that requests for correction, interpretation, or supplementation of arbitral awards do not suspend the time limits for recourse against the award. If changes are made to the award, the time limit for recourse against the revised part starts anew. This provision underscores the importance of timely action in addressing potential issues with an award while maintaining the overall efficiency and finality of the arbitration process.

## IX. Finality, challenge, revision

### Challenge

#### Art. 190

##### (1) The award is final from the time when it is notified.

Article 190(1) of the Swiss Private International Law Act (PILA) addresses the finality of arbitral awards. Let us analyse the content and implications of this provision:

1. **Finality of the Award:** Article 190(1) states that the arbitral award becomes final from the moment it is notified to the parties. This means that, once the award has been communicated to the parties, it is binding and conclusive, and it cannot be further appealed or challenged within the arbitration proceedings.
2. **Legal Certainty:** This provision contributes to legal certainty by establishing a clear point in time from which the award's enforceability and binding nature take effect. The finality of the award allows parties to have a definitive resolution of their dispute, which is essential for the stability of commercial relationships and the resolution of disputes.
3. **Enforceability:** The finality of the award is a crucial aspect of international arbitration, as it enables successful parties to seek enforcement of the award in domestic and foreign jurisdictions. Enforceability is a cornerstone of the arbitration process, as it provides parties with a mechanism to ensure compliance with the award.
4. **Limitation on Further Challenges:** Once an award is final, parties generally have limited recourse for challenging it. In many jurisdictions, the grounds for challenging arbitral awards are limited and typically pertain to issues like procedural irregularities, lack of jurisdiction, or violation of public policy.
5. **Enforcement of Awards:** Final awards can be enforced under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which facilitates the enforcement of arbitral awards across different countries.
6. **Practical Implications:** Parties should be aware that once an award is notified to them, it becomes final and binding. If there are any concerns or issues related to the award, parties should address them during the arbitration process before the award is finalised and notified.

In summary, Article 190(1) of the Swiss PILA establishes the finality of arbitral awards from the moment they are notified to the parties. This provision ensures legal certainty, promotes the enforceability of awards, and limits further challenges to the award within the arbitration proceedings.

- (2) The 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) the award is incompatible with public policy.

Article 190(2) of the Swiss Private International Law Act (PILA) outlines the limited grounds on which an arbitral award can be challenged. Let us analyse the content and implications of this provision:

1. Limited Grounds for Challenge: Article 190(2) specifies the specific grounds upon which an arbitral award can be challenged. These grounds are narrowly defined and generally relate to fundamental procedural and substantive issues that could affect the fairness and validity of the arbitral process.
2. Grounds for Challenge: The grounds for challenging an arbitral award under Article 190(2) are as follows:
  - a. Improper Appointment or Constitution: The challenge can be based on the argument that the sole arbitrator or the arbitral tribunal was not properly appointed or constituted.
  - b. Jurisdictional Errors: A challenge can be made if the arbitral tribunal wrongly accepted or declined jurisdiction over the dispute.
  - c. Claims Decided or Not Decided: The challenge can be based on the arbitral tribunal's alleged failure to either decide claims that were submitted to it or deciding claims that were not submitted to it.
  - d. Violation of Equal Treatment and Right to Be Heard: A challenge can arise if the principle of equal treatment of the parties or their right to be heard in adversarial proceedings was violated.
  - e. Incompatibility with Public Policy: The final ground for challenge is if the award is incompatible with public policy.
3. Safeguarding Fundamental Principles: The grounds for challenge outlined in Article 190(2) focus on safeguarding fundamental principles of arbitration, such as proper constitution of the tribunal, jurisdictional integrity, due process, and adherence to public policy.
4. Stringent Review Standard: The limited grounds for challenge underscore the principle of finality in arbitration. Courts typically apply a stringent standard when reviewing challenges, as arbitration is meant to provide a swift and efficient resolution of disputes.

5. **Public Policy Exception:** The public policy exception in Article 190(2)(e) is intended to be interpreted narrowly and is usually invoked in cases where the award's content contradicts fundamental legal principles or basic norms of justice.
6. **Practical Implications:** Parties seeking to challenge an arbitral award must carefully assess their grounds for challenge against the criteria specified in Article 190(2). They should consider whether the alleged errors or violations meet the specific requirements outlined in the provision.

In summary, Article 190(2) of the Swiss PILA delineates the limited and specific grounds upon which an arbitral award can be challenged. These grounds relate to issues of jurisdiction, procedural fairness, and compatibility with public policy. The provision reflects the principle of finality in arbitration and aims to ensure the integrity and efficiency of the arbitration process.

**(3) Preliminary awards can only be challenged on the grounds of paragraph 2(a) and (b); the time limit runs from the notification of the preliminary award.**

Article 190(3) of the Swiss Private International Law Act (PILA) pertains to the grounds and time limits for challenging preliminary awards in arbitration. Let us analyse the content and implications of this provision:

1. **Preliminary Awards:** Article 190(3) specifically addresses preliminary awards, which are decisions issued by arbitral tribunals on certain issues before the full resolution of the dispute. These preliminary awards can address issues related to jurisdiction, procedural matters, or other preliminary matters that need resolution before the main issues of the case.
2. **Limited Grounds for Challenge:** Preliminary awards, as outlined in Article 190(3), can only be challenged based on the grounds described in paragraph 2(a) and (b) of the same article. These grounds are:
  - a. Improper appointment or constitution of the sole arbitrator or arbitral tribunal.
  - b. Wrong acceptance or declination of jurisdiction by the arbitral tribunal.
3. **Time Limit for Challenge:** The provision specifies that the time limit for challenging preliminary awards runs from the moment of notification of the preliminary award to the parties. This time limit ensures that parties must act promptly if they intend to challenge a preliminary award based on the specified grounds.
4. **Focus on Procedural and Jurisdictional Issues:** Article 190(3) underscores the limited scope of challenges to preliminary awards. The grounds for challenge are primarily focused on procedural and jurisdictional issues, aligning with the nature of preliminary awards as decisions that often address preliminary matters rather than substantive disputes.
5. **Encouraging Efficiency:** By limiting the grounds for challenging preliminary awards and imposing a specific time limit, Article 190(3) encourages parties to address procedural and jurisdictional issues swiftly, promoting procedural efficiency in the arbitration process.



6. Practical Implications: Parties involved in arbitration proceedings should carefully consider the grounds for challenging preliminary awards and the associated time limits as prescribed in Article 190(3). If they believe that a preliminary award has been issued in error regarding the grounds mentioned in paragraph 2(a) and (b), they must take timely action to challenge the award.

In summary, Article 190(3) of the Swiss PILA governs challenges to preliminary awards in arbitration. It outlines the limited grounds on which such challenges can be made and specifies the time limit for making these challenges. The provision reflects the goal of promoting efficiency and certainty in arbitration proceedings while ensuring that parties have a mechanism to address issues related to the preliminary phase of the case.

#### **(4) The time limit for the challenge is 30 days from the notification of the award.**

Article 190(4) of the Swiss Private International Law Act (PILA) addresses the time limit for challenging arbitral awards. Let us analyse the content and implications of this provision:

1. Time Limit for Challenge: Article 190(4) specifies that the time limit for challenging an arbitral award is 30 days from the moment of notification of the award to the parties. This time limit is crucial for parties seeking to challenge an award based on the grounds outlined in Article 190(2) or 190(3).
2. Ensuring Timely Challenges: The provision serves to ensure that parties who wish to challenge an award based on the specified grounds must do so within a defined and relatively short period. This promotes finality in arbitration by encouraging parties to promptly address any issues they perceive with the award.
3. Consistency and Predictability: A clear and uniform time limit for challenging awards contributes to consistency and predictability in the arbitration process. It allows parties to understand their rights and obligations regarding the challenge process and helps avoid uncertainty.
4. Promoting Efficiency and Finality: Setting a relatively short time limit for challenges supports the efficiency of the arbitration process by requiring parties to address their concerns without unnecessary delay. It also aligns with the principle of finality in arbitration, which seeks to provide a definitive resolution to disputes.
5. Prerequisite for Enforcement: In many jurisdictions, the enforceability of an arbitral award is subject to certain conditions, including the expiration of the time limit for challenging the award. This ensures that an award is not subject to ongoing challenges that could hinder its enforcement.
6. Practical Implications: Parties should be aware of the 30-day time limit for challenging arbitral awards under Article 190(4). If a party intends to challenge an award based on the specified grounds, it must take action within this time frame. Failing to meet this deadline could result in the forfeiture of the right to challenge the award.

In summary, Article 190(4) of the Swiss PILA establishes a 30-day time limit for challenging arbitral awards. This provision serves to ensure timely challenges, promote efficiency, and uphold the principle

of finality in arbitration proceedings. Parties should adhere to this time limit if they intend to challenge an award based on the grounds specified in the relevant provisions.

## Revision

### Art. 190a

- (1) **A party may request the revision of an award:**
- (a) **if 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) **if 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) **if, despite having exercised due diligence, a ground for challenge under Article 180(1)(c) was not discovered until after the conclusion of the arbitration and no other remedy is available.**

Article 190a(1) of the Swiss Private International Law Act (PILA) outlines the circumstances under which a party may request the revision of an arbitral award. Let us analyse the content and implications of this provision:

1. **Grounds for Revision:** Article 190a(1) provides three specific grounds under which a party may request the revision of an arbitral award:
  - a. **Discovery of Material Facts or Evidence:** A party can request revision if it subsequently discovers material facts or conclusive evidence that were not available during the previous proceedings, despite having exercised due diligence. However, this provision excludes facts and evidence that postdate the award.
  - b. **Influence by Criminal Proceedings:** Revision can be requested if criminal proceedings have established that the award was influenced, to the detriment of the challenging party, by a crime or misdemeanour. This can occur even without a formal conviction. If criminal proceedings cannot be pursued, other means of proof are permissible.
  - c. **Late Discovery of Challenge Ground:** A party can seek revision if, despite exercising due diligence, it discovers a ground for challenge under Article 180(1)(c) (involving the independence or impartiality of an arbitrator) after the conclusion of the arbitration, and no other remedy is available.
2. **Preservation of Finality:** The grounds for requesting revision under Article 190a(1) are exceptional and designed to balance the principle of finality in arbitration with the need to rectify serious errors or injustices.

3. **Due Diligence Requirement:** In all three cases, the challenging party must demonstrate that it exercised due diligence in uncovering the relevant information or ground for revision. This emphasises the importance of proactive engagement during arbitration proceedings.
4. **Criminal Influence and Proof:** The provision recognises that the influence of criminal activity on the award could warrant revision, even if formal criminal convictions are not obtained. This allows parties to seek revision based on the outcome of criminal proceedings or alternative means of proof.
5. **Exhaustion of Remedies:** Article 190a(1)(c) addresses situations where a party discovers a challenge ground after the arbitration is concluded and no other remedy is available. This provision acknowledges that revision might be the only avenue left for addressing certain challenges.
6. **Practical Implications:** Parties considering a request for revision under Article 190a(1) should carefully assess whether their circumstances meet the specific criteria outlined for each ground. Due diligence in uncovering new facts or grounds for revision is crucial for the success of such requests.

In summary, Article 190a(1) of the Swiss PILA provides a framework for requesting the revision of an arbitral award based on specific grounds. These grounds include the discovery of new facts or evidence, the influence of criminal proceedings, and late discovery of challenge grounds. The provision emphasises the importance of due diligence and seeks to balance the principles of finality and justice in the arbitration process.

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

Article 190a(2) of the Swiss Private International Law Act (PILA) outlines the time limits for filing a request for the revision of an arbitral award. Let us analyse the content and implications of this provision:

1. **Time Limits for Filing a Request for Revision:** Article 190a(2) specifies two distinct time limits for filing a request for the revision of an arbitral award:
  - a. **90 Days from Discovery:** A party seeking revision must file the request within 90 days from the discovery of the ground for revision. This time frame reflects the urgency and necessity of prompt action once new facts or grounds for revision become known.
  - b. **Ten Years from Award's Enforceability:** Except in cases provided for by Article 190a(1)(b) (influence by criminal proceedings), the right to request revision shall expire ten years from the date on which the award has come into force. This extended time limit acknowledges that certain revision grounds may become apparent over a longer period.
2. **Balancing Finality and Right to Correction:** The provision strikes a balance between maintaining the finality and stability of arbitral awards while also recognising the

importance of addressing serious errors or injustices that may arise after an award has been rendered.

3. **Prompt Action and Lapse of Time:** The shorter 90-day time limit for discovery reflects the need for swift action when parties discover grounds for revision that warrant corrective measures. The ten-year time limit for other cases acknowledges that some errors or grounds for revision may not be apparent immediately and might take time to materialise.
4. **Grounds for Revision Exception:** The exception for Article 190a(1)(b) cases (influence by criminal proceedings) implies that, if a crime or misdemeanour has significantly affected the award, the time limits for revision do not apply, ensuring parties have a remedy in situations of criminal interference.
5. **Practical Considerations:** Parties considering requesting the revision of an arbitral award under Article 190a(2) should be mindful of the respective time limits. Depending on the nature of the ground for revision, they must take action within 90 days of discovery or within ten years from the award's enforceability.

In summary, Article 190a(2) of the Swiss PILA establishes specific time limits for filing a request for the revision of an arbitral award. These time limits reflect the need for prompt action when new grounds for revision are discovered while also accounting for longer periods during which revision grounds might become apparent. The provision balances the need for finality with the right to seek corrective measures in certain exceptional circumstances.

## Judicial authority for recourse

### Art. 191

**The Swiss Federal Supreme Court is the sole judicial authority for recourse against an award. The procedure is governed by Articles 77 and 119b of the Federal Supreme Court Act of 17 June 2005.**

Article 191 of the Swiss Private International Law Act (PILA) addresses the judicial recourse available for challenging arbitral awards. Let us analyse the content and implications of this provision:

1. **Exclusive Jurisdiction of the Swiss Federal Supreme Court:** Article 191 establishes that the Swiss Federal Supreme Court is the sole judicial authority to which parties can bring a recourse against an arbitral award. This means that parties who seek to challenge an award must do so by filing a recourse petition with the Swiss Federal Supreme Court, as this is the only competent court to hear such challenges.
2. **Scope of Recourse:** The recourse procedure provided by Article 191 is a mechanism for parties to challenge an arbitral award on the grounds specified in the preceding articles of the PILA, including Article 190(2) and Article 190(3). These grounds primarily relate to issues such as procedural irregularities, jurisdictional errors, or violations of the principle of equal treatment.
3. **Procedure and Applicable Law:** Article 191 indicates that the procedure for bringing a recourse against an award is governed by specific provisions of the Swiss Federal Supreme Court Act of 17 June 2005. These provisions include Articles 77 and 119b of the Federal

Supreme Court Act, which outline the procedural aspects, time limits, and requirements for filing and adjudicating a recourse petition.

4. **Expertise of the Swiss Federal Supreme Court:** The Swiss Federal Supreme Court is known for its expertise in arbitration matters and international commercial disputes. Its role as the sole judicial authority for recourse against arbitral awards contributes to the consistent application of Swiss law in international arbitration cases.
5. **Finality of the Recourse Process:** Once the Swiss Federal Supreme Court issues its decision on a recourse petition, that decision is final and binding. This reflects the principle of finality in arbitration, as parties have the opportunity to bring their challenges before a specialised and authoritative court, and the court's decision concludes the review process.
6. **Enforceability of the Award after Recourse:** If the Swiss Federal Supreme Court upholds the arbitral award and dismisses the recourse, the award retains its enforceability. If the court decides to set aside the award, it effectively annuls the award, and the dispute may need to be resolved through other means.
7. **Practical Implications:** Parties seeking to challenge an arbitral award should be aware that the Swiss Federal Supreme Court is the exclusive authority for such recourse. They should adhere to the procedural requirements and time limits specified in the Federal Supreme Court Act when filing a recourse petition.

In summary, Article 191 of the Swiss PILA designates the Swiss Federal Supreme Court as the sole judicial authority for recourse against arbitral awards. The recourse process is governed by specific provisions of the Federal Supreme Court Act, and the court's decision is final. This provision contributes to the consistency and predictability of the arbitration process and reinforces the importance of the finality of arbitral awards.

## X. Waiver of recourse

### Art. 192

- (1) If none of the parties has its domicile, habitual residence, or seat in Switzerland, the parties may, either in the arbitration agreement or in a subsequent agreement, exclude in whole or in part recourse against arbitral awards; the right to revision under Article 190a(1)(b) cannot be waived. The agreement shall meet the conditions as to form set out in Article 178(1).**

Article 192(1) of the Swiss Private International Law Act (PILA) addresses the possibility of parties excluding recourse against arbitral awards when none of the parties involved in the arbitration have their domicile, habitual residence, or seat in Switzerland. Let us analyse the content and implications of this provision:

1. **Recourse Against Arbitral Awards:** Recourse against arbitral awards refers to the process of challenging or seeking the annulment of an award through a judicial authority. Article 192(1) provides that when none of the parties involved in the arbitration have their domicile, habitual residence, or seat in Switzerland, they have the option to exclude, either in the arbitration agreement or in a subsequent agreement, the right to recourse against arbitral awards.

2. **Exclusion of Recourse:** The provision allows parties to waive their right to seek recourse against arbitral awards, effectively agreeing not to challenge the award in court. This can contribute to the finality and efficiency of the arbitration process by limiting the scope for post-award challenges.
3. **Partial Exclusion:** The parties can choose to exclude recourse against arbitral awards either in whole or in part. This means that they can agree to exclude recourse for specific grounds or issues while retaining the right to recourse for others. Such agreements should be clearly specified in the arbitration agreement or in a subsequent agreement.
4. **Exception for Revision under Article 190a(1)(b):** Article 192(1) stipulates that the right to revision under Article 190a(1)(b) cannot be waived, even if the parties have agreed to exclude recourse against arbitral awards. This means that, regardless of the exclusion agreement, parties cannot waive the right to request revision based on the influence of criminal proceedings on the award.
5. **Form Requirement:** Any agreement to exclude recourse against arbitral awards must meet the formal requirements outlined in Article 178(1) of the PILA. This generally means that the agreement must be in writing or evidenced in a manner that can be verified by text.
6. **Practical Considerations:** Parties entering into arbitration agreements involving parties without domicile, habitual residence, or seat in Switzerland should carefully consider whether they wish to include an exclusion of recourse clause. This decision should be made in light of their specific circumstances, the nature of the dispute, and their desired level of flexibility in challenging an award.

In summary, Article 192(1) of the Swiss PILA provides parties with the option to exclude recourse against arbitral awards when none of the parties have their domicile, habitual residence, or seat in Switzerland. This provision allows parties to agree to waive their right to challenge an award in court, either in whole or in part, subject to the exception for revision under Article 190a(1)(b). Any such agreement must meet the form requirements specified in Article 178(1) and should be carefully considered based on the parties' preferences and circumstances.

**(2) If the parties have excluded any recourse against arbitral awards and such awards are to be enforced in Switzerland, the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards shall apply by analogy.**

Article 192(2) of the Swiss Private International Law Act (PILA) addresses the enforcement of arbitral awards when the parties have excluded recourse against those awards. Let us analyse the content and implications of this provision:

1. **Exclusion of Recourse and Award Enforcement:** Article 192(2) assumes a scenario where the parties have mutually agreed to exclude any recourse against arbitral awards. This means that they have waived their right to challenge an award in court. In such cases, the provision addresses the enforcement of these awards in Switzerland.
2. **Application of the New York Convention:** The provision states that if the parties have excluded recourse against arbitral awards and those awards are intended to be enforced in Switzerland, the New York Convention of 10 June 1958 on the Recognition and

Enforcement of Foreign Arbitral Awards shall apply by analogy. The New York Convention is a widely recognised international treaty that aims to facilitate the enforcement of arbitral awards in different jurisdictions.

3. **Analogy to the New York Convention:** By applying the New York Convention “by analogy”, Article 192(2) essentially extends the principles and procedures established in the Convention to the enforcement of awards where recourse has been excluded. This approach provides a framework for the recognition and enforcement of arbitral awards that is consistent with the principles of the New York Convention.
4. **Recognition and Enforcement of Awards:** The New York Convention promotes the recognition and enforcement of foreign arbitral awards in signatory states, and its provisions guide the process of enforcing awards across international borders. In the context of Article 192(2), the Convention’s principles are adapted to apply to the enforcement of awards within Switzerland when recourse has been excluded.
5. **Efficiency and Predictability:** By applying the New York Convention’s principles to the enforcement of awards without recourse, Article 192(2) promotes efficiency and predictability in the enforcement process. This is particularly important when parties have deliberately chosen to exclude recourse as a means of resolving disputes.
6. **Practical Considerations:** Parties considering excluding recourse against arbitral awards in their arbitration agreements should also take into account the implications of enforcing such awards. The application of the New York Convention principles by analogy ensures a recognised and well-established framework for enforcing awards without recourse.

In summary, Article 192(2) of the Swiss PILA addresses the enforcement of arbitral awards when recourse has been excluded by the parties. In such cases, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards applies by analogy, providing a recognised and efficient framework for the enforcement of awards in Switzerland. This provision aligns the enforcement process with established international practices and principles.

## **XI. Deposit and certificate of enforceability**

### **Art. 193**

- (1) Any party may, at its own expense, deposit a copy of the award with the state court at the seat of the arbitration.**

Article 193(1) of the Swiss Private International Law Act (PILA) addresses the option for any party to deposit a copy of the arbitral award with the state court at the seat of the arbitration. Let us analyse the content and implications of this provision:

1. **Voluntary Deposit of Award Copy:** Article 193(1) allows any party involved in an arbitration to voluntarily deposit a copy of the arbitral award with the state court located at the seat of the arbitration. This is not a mandatory requirement but rather a choice made by the parties for their own benefit.



2. Purpose of Deposit: The deposit of the award copy serves as a formal notification to the court that an arbitral award has been rendered in the arbitration. This can have implications for the enforceability and legal effect of the award, especially in cases where enforcement actions may be pursued later.
3. Benefit of Early Notice: By depositing a copy of the award with the state court, the parties provide early notice to the court about the existence of the award. This can help streamline any potential future enforcement procedures and minimise delays.
4. Record of Award: Depositing a copy of the award creates an official record of the award within the state court's jurisdiction. This record can be useful for parties, courts, and other stakeholders to access information about the arbitration and the award.
5. At Party's Expense: The provision specifies that the party depositing the award copy is responsible for the associated expenses. This includes any costs related to producing, copying, and delivering the award to the state court.
6. Optional Step: Article 193(1) does not impose a mandatory requirement to deposit the award copy with the state court. It is up to the parties' discretion to decide whether they want to take this step.
7. Practical Implications: Depositing a copy of the arbitral award with the state court can be a proactive measure taken by parties to ensure the official record of the award's existence is available to the relevant jurisdiction. This can be particularly important when parties anticipate future enforcement actions or want to ensure transparency in the arbitration process.

In summary, Article 193(1) of the Swiss PILA allows any party involved in an arbitration to deposit a copy of the arbitral award with the state court at the seat of the arbitration. This voluntary step provides formal notice of the award's existence, creates a record within the court's jurisdiction, and may facilitate future enforcement procedures. The expenses associated with the deposit are borne by the party making the deposit.

**(2) At the request of a party, the state court at the seat of the arbitration shall certify the enforceability of the award.**

Article 193(2) of the Swiss Private International Law Act (PILA) addresses the certification of enforceability of an arbitral award by the state court at the seat of the arbitration. Let us analyse the content and implications of this provision:

1. Enforceability Certification Request: Article 193(2) provides that, upon the request of a party, the state court located at the seat of the arbitration shall certify the enforceability of the arbitral award. This certification serves as an official recognition by the court that the award is legally valid and can be enforced.
2. Purpose of Certification: The certification of enforceability acts as a formal confirmation that the arbitral award has met the necessary legal requirements to be recognised and enforced as a binding judgment. This certification can facilitate the enforcement process by providing assurance to potential enforcing parties.

3. **Facilitating Enforcement Proceedings:** When parties seek to enforce an arbitral award in other jurisdictions, the enforceability certification from the state court can serve as evidence of the award's legitimacy. This can expedite the recognition and enforcement process in other countries.
4. **Enforceability under Swiss Law:** The certification of enforceability is typically granted based on the arbitral award's compliance with Swiss law and the requirements set forth in the PILA. This includes criteria such as the proper constitution of the arbitral tribunal, due process, and conformity with public policy.
5. **Safeguarding Legal Rights:** The option to request the certification of enforceability ensures that parties have a means to officially confirm the award's legal status before pursuing enforcement actions. This can help parties make informed decisions about how to proceed.
6. **Parties' Right to Request:** The provision recognises the parties' right to request the certification of enforceability. This means that parties have some control over when and how they initiate the certification process.
7. **Practical Considerations:** Parties seeking to enforce an arbitral award in Switzerland or in other jurisdictions can benefit from the certification of enforceability. It can provide credibility and streamline the enforcement process. Parties should be aware of the relevant procedures and requirements for making such a request.

In summary, Article 193(2) of the Swiss PILA grants parties the right to request the state court at the seat of the arbitration to certify the enforceability of an arbitral award. This certification serves as official confirmation that the award meets the necessary legal criteria for recognition and enforcement. This provision can facilitate the enforcement process and enhance the award's credibility in both domestic and international contexts.

**(3) At the request of a party, the arbitral tribunal shall certify that the award has been rendered in conformity with the provisions of this Act; such certificate has the same effect as the deposit of the award.**

Article 193(3) of the Swiss Private International Law Act (PILA) pertains to the certification of arbitral awards by the arbitral tribunal and their effects. Let us analyse the content and implications of this provision:

1. **Certification by the Arbitral Tribunal:** Article 193(3) allows a party to request the arbitral tribunal to provide a certification that the arbitral award has been rendered in conformity with the provisions of the PILA. This certification is essentially an official statement by the arbitral tribunal attesting to the award's compliance with the requirements of the law.
2. **Effect of the Certificate:** The provision states that the certificate issued by the arbitral tribunal has the same effect as the deposit of the award. This means that the certification serves as an alternative means of formalising the award's legal status, similar to depositing a copy of the award with the state court.
3. **Confirming Legal Compliance:** By requesting the arbitral tribunal to certify the conformity of the award with the PILA, parties can obtain official confirmation that the award has been

rendered in accordance with Swiss law and the requirements outlined in the PILA. This can be especially relevant for enforcement actions.

4. **Substitute for Deposit:** In situations where the parties may prefer not to deposit a copy of the award with the state court, the certification provided by the arbitral tribunal can serve as an alternative method of establishing the award's legal validity and enforceability.
5. **Practical Implications:** The certification by the arbitral tribunal offers parties a means to ensure that their award meets the legal criteria for enforcement under Swiss law. This can be particularly valuable when parties intend to enforce the award within Switzerland or in other jurisdictions.
6. **Balancing Flexibility and Formality:** The certification option reflects the PILA's aim to provide parties with flexible tools for ensuring the enforceability of their awards while maintaining a degree of formality. Parties can choose between depositing the award with the state court or obtaining a certification from the arbitral tribunal.

In summary, Article 193(3) of the Swiss PILA allows parties to request the arbitral tribunal to certify that an arbitral award has been rendered in conformity with the provisions of the Act. This certification has the same effect as depositing the award with the state court and provides parties with an alternative means of confirming the award's compliance with legal requirements. This provision underscores the flexibility of the PILA in providing options for establishing the legal status and enforceability of arbitral awards.

## XII. Foreign arbitral awards

### Art. 194

#### **The recognition and enforcement of a foreign arbitral award is governed by the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.**

Article 194 of the Swiss Private International Law Act (PILA) addresses the recognition and enforcement of foreign arbitral awards and references the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. Let us analyse the content and implications of this provision:

1. **Recognition and Enforcement of Foreign Arbitral Awards:** Article 194 establishes the legal framework for the recognition and enforcement of foreign arbitral awards in Switzerland. This provision sets out the rules that govern the recognition and enforceability of awards rendered in foreign jurisdictions.
2. **Reference to the New York Convention:** Article 194 specifies that the recognition and enforcement of foreign arbitral awards are governed by the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. The New York Convention is a widely recognised and respected international treaty that facilitates the enforcement of arbitral awards across different countries.
3. **The New York Convention:** The New York Convention, often referred to as the "New York Convention", is a multilateral treaty aimed at promoting the recognition and enforcement

of foreign arbitral awards. It establishes a uniform legal framework for enforcing arbitral awards in signatory countries, providing a mechanism for parties to enforce awards without undergoing lengthy and complex court proceedings.

4. **Harmonised Enforcement Regime:** By referencing the New York Convention, Article 194 aligns the Swiss legal framework for recognising and enforcing foreign arbitral awards with international standards. This harmonisation enhances legal predictability and consistency in cross-border enforcement proceedings.
5. **Efficiency and Expediency:** The New York Convention offers a streamlined process for enforcing foreign arbitral awards. This is particularly valuable in international commercial disputes, where parties seek timely enforcement of awards in various jurisdictions.
6. **Implications for Enforcement in Switzerland:** For parties seeking to enforce foreign arbitral awards in Switzerland, Article 194 ensures that the enforcement process is governed by the principles and procedures outlined in the New York Convention. This includes grounds for refusing recognition and enforcement, the recognition of the finality of the award, and the limited scope for challenging the award's validity.

In summary, Article 194 of the Swiss PILA establishes that the recognition and enforcement of foreign arbitral awards in Switzerland are subject to the rules and procedures outlined in the New York Convention of 1958. This provision ensures that the enforcement process is aligned with international standards, promotes efficiency in cross-border enforcement, and contributes to a harmonised framework for the recognition and enforcement of foreign arbitral awards in Switzerland.

**Chapter 3 The Federal Supreme Court as an ordinary court of appeal Section 1 Appeal in civil matters****Art. 77 Arbitration**

- (1) An appeal in civil matters is admissible, regardless of the amount in dispute, against the decisions of arbitral tribunals:**
- (a) in international arbitrations, under the conditions set out in Articles 190-192 of the Private International Law Act of 18 December 1987;**
  - (b) in domestic arbitrations, under the conditions set out in Articles 389 to 395 of the Code of Civil Procedure of 19 December 2008.**

Article 77(1) of the Federal Supreme Court Act outlines the conditions under which appeals in civil matters are admissible against the decisions of arbitral tribunals in Switzerland. This provision addresses appeals for both international and domestic arbitrations. Let us analyse the content and implications of this provision:

1. **Appeal against Decisions of Arbitral Tribunals:** Article 77(1) establishes that appeals in civil matters can be lodged against the decisions of arbitral tribunals. This means that parties dissatisfied with the outcome of an arbitration can seek a review of the decision through the Swiss legal system.
2. **Scope of Applicability:** The provision applies to both international and domestic arbitrations, addressing two different sets of conditions based on the nature of the arbitration.
3. **Conditions for International Arbitrations (a):** In international arbitrations, the conditions for admissible appeals are governed by Articles 190-192 of the Swiss Private International Law Act (PILA). These articles cover matters related to the recognition and enforcement of foreign arbitral awards. Parties seeking to appeal an international arbitral award must meet the requirements specified in these articles.
4. **Conditions for Domestic Arbitrations (b):** For domestic arbitrations, the conditions for admissible appeals are defined by Articles 389 to 395 of the Swiss Code of Civil Procedure (CCP). These articles outline the procedures for challenging domestic arbitral awards within the Swiss legal system.
5. **Uniformity and Legal Certainty:** By specifying the conditions for admissible appeals against arbitral decisions in both international and domestic arbitrations, Article 77(1) aims to promote uniformity and legal certainty in the arbitration process. Parties can anticipate the circumstances under which they may challenge arbitration outcomes.
6. **Access to Judicial Review:** The provision reflects the principle that parties should have access to a form of judicial review if they believe that an arbitral award is incorrect or unjust. This helps ensure fairness and procedural integrity in the arbitration process.

7. Role of the Federal Supreme Court: The Federal Supreme Court plays a crucial role in reviewing appeals against arbitral decisions. It provides an avenue for parties to seek redress if they believe that legal errors have occurred during the arbitration proceedings.

In summary, Article 77(1) of the Federal Supreme Court Act outlines the conditions under which appeals in civil matters are admissible against the decisions of arbitral tribunals in Switzerland. It covers both international and domestic arbitrations, providing a structured framework for parties to seek judicial review of arbitral awards under the specified conditions of the Swiss Private International Law Act (PILA) for international arbitrations and the Swiss Code of Civil Procedure (CCP) for domestic arbitrations.

**(2) Articles 48(3), 90 to 98, 103(2), 105(2) and 106(1), as well as Article 107(2), to the extent that the latter provision allows the Federal Supreme Court to rule on the merits of the case, do not apply in these cases.**

Article 77(2) of the Federal Supreme Court Act specifies certain provisions of the Act that do not apply to appeals against decisions of arbitral tribunals. This provision defines the scope of the Federal Supreme Court's review of arbitral awards. Let us analyse the content and implications of this provision:

1. Limitations on Applicable Provisions: Article 77(2) outlines specific provisions of the Federal Supreme Court Act that do not apply to appeals against decisions of arbitral tribunals. These provisions are set aside when it comes to reviewing arbitral awards.
2. Exempted Provisions: The provision lists the following articles that do not apply to appeals against arbitral awards:
  - a. Article 48(3): Deals with the composition of the Federal Supreme Court and the appointment of judges.
  - b. Articles 90 to 98: Address jurisdiction, admissibility, and procedural matters related to the Federal Supreme Court's proceedings.
  - c. Article 103(2): Pertains to the requirements for the form and content of appeals.
  - d. Article 105(2) and 106(1): Relate to the assessment of evidence and factual findings.
  - e. Article 107(2), to the extent that it allows the Federal Supreme Court to rule on the merits of the case.
3. Implications for Review of Arbitral Awards: Article 77(2) clarifies that these exempted provisions do not apply when the Federal Supreme Court is reviewing appeals against arbitral awards. This reflects the intention to provide a distinct and specific framework for reviewing arbitral awards, separate from the regular procedures and standards applied in other cases.
4. Focus on Limited Review: The exclusion of these provisions underscores the principle of limited judicial review of arbitral awards. Courts generally refrain from re-assessing factual findings and legal interpretations made by arbitral tribunals, preserving the finality and autonomy of the arbitration process.

5. **Preservation of Arbitral Autonomy:** By limiting the scope of review, Article 77(2) supports the idea that parties have chosen arbitration as a mechanism for dispute resolution and that the decisions of arbitral tribunals should be respected, subject to specific grounds for challenge.
6. **Efficiency and Consistency:** Exempting certain provisions of the Federal Supreme Court Act streamlines the review process for arbitral awards, promoting efficiency and consistency in how appeals against such awards are handled.

In summary, Article 77(2) of the Federal Supreme Court Act stipulates that certain provisions of the Act, including those related to procedural matters, evidence assessment, and the Federal Supreme Court's authority to rule on the merits, do not apply to appeals against decisions of arbitral tribunals. This provision underscores the distinct nature of the review process for arbitral awards, reflecting the principles of limited review, preservation of arbitral autonomy, and efficiency in the appeal process.

### **(2bis) Written submissions may be in English.**

Article 77(2bis) of the Federal Supreme Court Act introduces a provision that allows written submissions in English for appeals against decisions of arbitral tribunals. Let us analyse the content and implications of this provision:

1. **Written Submissions in English:** Article 77(2bis) permits parties to submit written arguments and pleadings in English when filing appeals against decisions of arbitral tribunals to the Federal Supreme Court.
2. **Language Flexibility:** This provision enhances language flexibility by acknowledging that English, as a widely used international language, may be used for written submissions in the appeal process. This can be especially helpful for international arbitration cases involving parties and legal practitioners from various linguistic backgrounds.
3. **Facilitating International Proceedings:** Allowing written submissions in English aligns with the international nature of many arbitration cases. It facilitates communication between parties, their legal representatives, and the Federal Supreme Court in cross-border disputes.
4. **Reduced Language Barriers:** For parties and legal representatives who are more comfortable with English than with the official languages of Switzerland, this provision can reduce language barriers and enhance their ability to effectively participate in the appeal process.
5. **Consistency with International Arbitration Practices:** The use of English in written submissions is in line with common practices in international arbitration, where English is often the preferred language for communication and documentation.
6. **Practical Implications:** Article 77(2bis) acknowledges the practical realities of international arbitration and the need for effective communication among diverse parties. It reflects Switzerland's commitment to maintaining an arbitration-friendly environment that accommodates parties from different jurisdictions.



7. **Potential for Enhanced Accessibility:** This provision may contribute to making the Swiss arbitration system more accessible to parties who are more comfortable using English as a legal language, thereby potentially attracting more international arbitration cases to Switzerland.

In summary, Article 77(2bis) of the Federal Supreme Court Act allows parties to submit written arguments and pleadings in English when appealing decisions of arbitral tribunals to the Federal Supreme Court. This language flexibility aligns with international arbitration practices, enhances accessibility, and acknowledges the international nature of arbitration cases.

### **(3) The Federal Supreme Court only examines grounds for challenge that have been raised and substantiated by the challenging party.**

Article 77(3) of the Federal Supreme Court Act sets a principle regarding the scope of examination by the Federal Supreme Court when considering appeals against decisions of arbitral tribunals. Let us analyse the content and implications of this provision:

1. **Limited Grounds for Examination:** Article 77(3) establishes that the Federal Supreme Court will only examine grounds for challenge that have been raised and substantiated by the party challenging the arbitral award. In other words, the court will not consider grounds that have not been raised by the party or that have not been supported with evidence or arguments.
2. **Focused Review:** The provision ensures that the Federal Supreme Court's review remains focused on the specific issues and arguments presented by the parties. This principle is consistent with the overall goal of arbitration, which is to provide a more efficient and streamlined dispute resolution process.
3. **Emphasis on Party Autonomy:** The provision respects the autonomy of the parties involved in the arbitration process. Parties have the responsibility to identify and raise any potential grounds for challenging the award during the arbitration proceedings.
4. **Preventing After-the-Fact Arguments:** By requiring that grounds for challenge be substantiated and raised during the arbitration proceedings, Article 77(3) discourages parties from attempting to introduce new arguments or challenges after the award has been rendered. This helps prevent delay and ensures the finality of arbitral awards.
5. **Encouraging Diligence and Fairness:** The provision encourages parties to exercise due diligence and raise their challenges in a timely manner during the arbitration proceedings. It also promotes fairness by preventing parties from raising surprise challenges at the appeal stage.
6. **Efficient Dispute Resolution:** Limiting the scope of examination to the challenges presented by the parties aligns with the broader goal of arbitration to provide a more efficient and cost-effective means of resolving disputes compared to traditional litigation.
7. **Judicial Economy:** By focusing on the specific issues raised by the parties, the Federal Supreme Court can more efficiently review appeals and avoid addressing issues that were not properly presented and argued during the arbitration proceedings.

In summary, Article 77(3) of the Federal Supreme Court Act specifies that the Federal Supreme Court will only consider and examine the grounds for challenge that have been raised and substantiated by the party challenging the arbitral award. This principle underscores the importance of party autonomy, encourages diligence, and ensures an efficient and focused review process that respects the finality of arbitral awards.

**Art. 119a****(1) The Federal Supreme Court decides on requests for revision of international arbitral awards under the conditions set out in Article 190a of the Private International Law Act of 18 December 1987.**

Article 119a(1) of the Federal Supreme Court Act pertains to the Federal Supreme Court's authority to decide on requests for revision of international arbitral awards. Let us analyse the content and implications of this provision:

1. **Scope of Application:** Article 119a(1) specifies that the provision applies to requests for revision of international arbitral awards. This indicates that the Federal Supreme Court's authority to decide on revisions is limited to awards from international arbitrations, rather than domestic ones.
2. **Reference to Article 190a:** The provision refers to Article 190a of the Swiss Private International Law Act (PILA) as the basis for the conditions under which the Federal Supreme Court can consider requests for revision. Article 190a of the PILA outlines the circumstances and conditions under which parties can request the revision of an international arbitral award.
3. **Grounds for Revision:** Article 190a of the PILA provides a framework for requesting the revision of international arbitral awards based on specific grounds, such as discovering new material facts, evidence, or grounds for challenge that were not available during the original proceedings.
4. **Federal Supreme Court's Role:** Article 119a(1) confirms that the Federal Supreme Court is the competent authority to assess and decide on requests for revision of international arbitral awards based on the criteria and conditions set forth in Article 190a of the PILA.
5. **Importance of Uniformity:** Having the Federal Supreme Court as the sole authority to decide on revisions of international arbitral awards ensures uniformity in the interpretation and application of the grounds for revision as outlined in Article 190a of the PILA.
6. **Protection of Finality:** Revisions of arbitral awards are generally exceptional and aimed at addressing extraordinary circumstances. By placing the authority to decide on revisions with the Federal Supreme Court, the legal system maintains a balance between preserving the finality of arbitral awards and addressing situations where revision is warranted.
7. **Legal Certainty:** Article 119a(1) contributes to legal certainty by providing a clear path for parties seeking to request the revision of international arbitral awards, as well as a consistent approach to addressing such requests.

In summary, Article 119a(1) of the Federal Supreme Court Act establishes the Federal Supreme Court's jurisdiction to decide on requests for revision of international arbitral awards, in accordance with the conditions outlined in Article 190a of the Swiss Private International Law Act. This provision ensures a clear and uniform process for parties seeking to have international arbitral awards revised based on specific grounds outlined in the PILA.

- (2) The revision procedure is governed by Articles 77(2bis) and 126. Unless the Federal Supreme Court determines the request for revision to be manifestly inadmissible or unfounded, it shall notify it to the opposing party and the arbitral tribunal for comment.**

Article 119a(2) of the Federal Supreme Court Act outlines the procedure for the revision of international arbitral awards. Let us analyse the content and implications of this provision:

1. **Procedural Framework:** Article 119a(2) specifies the procedural rules that apply to the revision procedure for international arbitral awards. These rules are Articles 77(2bis) and 126 of the Federal Supreme Court Act.
2. **Reference to Article 77(2bis):** Article 77(2bis), which we discussed earlier, allows written submissions to be in English. This reference indicates that parties can use English for written submissions during the revision procedure for international arbitral awards.
3. **Reference to Article 126:** Article 126 outlines the procedure for submitting and notifying documents to the Federal Supreme Court. This reference indicates the practical steps to be followed when initiating a revision procedure and submitting relevant documents.
4. **Notification to Opposing Party and Arbitral Tribunal:** The provision requires the Federal Supreme Court to notify the opposing party and the arbitral tribunal when a request for revision of an international arbitral award is received. This notification serves as a formal communication that a revision request has been submitted and provides an opportunity for the opposing party and the arbitral tribunal to comment on the request.
5. **Opportunity for Comments:** By notifying the opposing party and the arbitral tribunal, Article 119a(2) ensures that all parties involved have the chance to express their views on the request for revision. This promotes transparency and fairness in the revision procedure.
6. **Judicial Evaluation:** The provision underscores the principle that the Federal Supreme Court will evaluate the request for revision in a thorough manner. The court's decision to determine whether the request is admissible or unfounded indicates that there will be an assessment of the merits of the request.
7. **Balancing Interests:** Article 119a(2) aims to balance the interests of the parties seeking revision with the opportunity for the opposing party and the arbitral tribunal to provide input. This process supports a fair and comprehensive review of the request for revision.
8. **Protection of Finality:** The requirement for the Federal Supreme Court to determine if the request for revision is manifestly inadmissible or unfounded indicates that the court is conscious of the need to protect the finality of arbitral awards.

In summary, Article 119a(2) of the Federal Supreme Court Act outlines the procedure for the revision of international arbitral awards. It references specific procedural rules, provides for notification to the opposing party and the arbitral tribunal, and underscores the importance of evaluating the merits of the revision request while ensuring fairness and protection of finality.

**(3) If the Federal Supreme Court grants the request for revision, it shall set the award aside and remand the case to the arbitral tribunal for a new decision or make the necessary findings.**

Article 119a(3) of the Federal Supreme Court Act specifies the consequences of the Federal Supreme Court granting a request for revision of an international arbitral award. Let us analyse the content and implications of this provision:

1. **Award Set Aside:** Article 119a(3) stipulates that if the Federal Supreme Court grants a request for revision, it shall set aside the award that is subject to the revision. This means that the original award is effectively invalidated or annulled as a result of the revision process.
2. **Remand or New Decision:** The provision outlines two potential courses of action that the Federal Supreme Court may take following the set aside of the award:
  - a. The court may remand the case back to the same arbitral tribunal for a new decision. This implies that the same arbitral tribunal that rendered the original award is given the opportunity to reconsider the case in light of the revised circumstances or new evidence.
  - b. Alternatively, the court may itself make the necessary findings, effectively substituting its own judgment for that of the arbitral tribunal. This option is likely to be pursued when the circumstances warrant immediate resolution and it is not practical or appropriate to remand the case.
3. **Protection of Finality:** Article 119a(3) reflects the principle that revision of an arbitral award should be exceptional and based on compelling reasons. Setting aside the award and either remanding the case or making new findings ensures that the review process addresses any errors or issues in the original award while maintaining a degree of finality in the arbitration process.
4. **Appropriate Resolution:** The provision provides the Federal Supreme Court with flexibility to choose the most suitable course of action based on the specific circumstances of the case. This flexibility allows for a tailored approach to addressing the issues raised in the revision request.
5. **Balancing Interests:** Article 119a(3) aims to strike a balance between correcting errors or injustices that may have occurred in the original award and respecting the efficiency and finality of arbitration. The remand option allows parties to have their case reconsidered within the arbitration process, while the option for the Federal Supreme Court to make the necessary findings reflects the court's role as the ultimate arbiter in certain cases.
6. **Certainty in the Revision Process:** The provision provides clarity about the potential outcomes of a successful revision request, ensuring that parties understand the potential consequences of pursuing a revision.

In summary, Article 119a(3) of the Federal Supreme Court Act outlines the consequences of the Federal Supreme Court granting a request for revision of an international arbitral award. The provision specifies that the court will set aside the award and either remand the case to the arbitral tribunal for a new decision or make the necessary findings itself, depending on the circumstances of the case. This

provision aims to ensure a fair and appropriate resolution while maintaining the overall efficiency and finality of the arbitration process.

**(4) If the arbitral tribunal no longer comprises the required number of arbitrators, Article 179 of the Private International Law Act shall apply.**

Article 119a(4) of the Federal Supreme Court Act addresses a situation where the arbitral tribunal no longer has the required number of arbitrators. Let us analyse the content and implications of this provision:

1. **Reference to Article 179:** Article 119a(4) refers to Article 179 of the Swiss Private International Law Act (PILA). Article 179 of the PILA outlines the procedure for appointing and replacing arbitrators in international arbitration proceedings. It establishes rules for how the arbitral tribunal should be constituted and what should happen if it no longer has the required number of arbitrators.
2. **Addressing Insufficient Arbitrators:** The provision anticipates a scenario where the composition of the arbitral tribunal falls below the required number of arbitrators. This could happen due to resignation, incapacity, or other reasons that lead to a vacancy in the tribunal.
3. **Application of Article 179:** Article 119a(4) clarifies that when such a situation arises, the procedure outlined in Article 179 of the PILA will come into play. This means that the process for appointing or replacing arbitrators will be followed to ensure that the arbitral tribunal is properly constituted with the required number of arbitrators.
4. **Ensuring Tribunal Integrity:** The reference to Article 179 underscores the importance of maintaining the integrity and functionality of the arbitral tribunal. It ensures that the tribunal continues to have the necessary composition to effectively address the revision request or any further proceedings related to the award.
5. **Link to Arbitral Tribunal Composition:** The provision demonstrates the interconnection between the procedure for requesting revision and the composition of the arbitral tribunal. If a vacancy in the tribunal occurs, the process outlined in Article 179 helps address the issue while adhering to the procedures and requirements for appointing and replacing arbitrators.
6. **Procedural Clarity:** By referencing Article 179, Article 119a(4) provides parties and practitioners with clarity about the steps to take if the composition of the arbitral tribunal becomes inadequate due to the departure of arbitrators.

In summary, Article 119a(4) of the Federal Supreme Court Act addresses the scenario where the arbitral tribunal lacks the required number of arbitrators. It references Article 179 of the Swiss Private International Law Act, which outlines the procedure for appointing and replacing arbitrators, ensuring that the tribunal remains properly constituted to address revision requests and other proceedings related to the arbitral award.





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