

Chambers

GLOBAL PRACTICE GUIDE

Definitive global law guides offering
comparative analysis from top ranked lawyers

Litigation

Switzerland
Lenz & Staehelin

[chambers.com](https://www.chambers.com)

2019

Law and Practice

Contributed by Lenz & Staehelin

Contents

1. General	p.4	5.4 Alternatives to Discovery Mechanisms	p.7
1.1 General Characteristics of Legal System	p.4	5.5 Legal Privilege	p.7
1.2 Structure of Country's Court System	p.4	5.6 Rules Disallowing Disclosure of a Document	p.7
1.3 Court Filings and Proceedings	p.5	6. Injunctive Relief	p.7
1.4 Legal Representation in Court	p.5	6.1 Circumstances of Injunctive Relief	p.7
2. Litigation Funding	p.5	6.2 Arrangements for Obtaining Urgent Injunctive Relief	p.7
2.1 Third-party Litigation Funding	p.5	6.3 Availability of Injunctive Relief on an Ex Parte Basis	p.8
2.2 Third-party Funding of Lawsuits	p.5	6.4 Applicant's Liability for Damages	p.8
2.3 Third-party Funding for Plaintiffs and Defendants	p.5	6.5 Respondent's Worldwide Assets and Injunctive Relief	p.8
2.4 Minimum and Maximum Amounts of Third-party Funding	p.5	6.6 Third Parties and Injunctive Relief	p.8
2.5 Third-party Funding of Costs	p.5	6.7 Consequences of a Respondent's Non-compliance	p.8
2.6 Contingency Fees	p.5	7. Trials and Hearings	p.8
2.7 Time Limit for Obtaining Third-party Funding	p.5	7.1 Trial Proceedings	p.8
3. Initiating a Lawsuit	p.5	7.2 Case Management Hearings	p.8
3.1 Rules on Pre-action Conduct	p.5	7.3 Jury Trials in Civil Cases	p.8
3.2 Statutes of Limitations	p.5	7.4 Rules That Govern Admission of Evidence	p.8
3.3 Jurisdictional Requirements for a Defendant	p.5	7.5 Expert Testimony	p.8
3.4 Initial Complaint	p.6	7.6 Extent to Which Hearings are Open to the Public	p.8
3.5 Rules of Service	p.6	7.7 Level of Intervention by a Judge	p.9
3.6 Failure to Respond to a Lawsuit	p.6	7.8 General Timeframes for Proceedings	p.9
3.7 Representative or Collective Actions	p.6	8. Settlement	p.9
3.8 Requirement for a Costs Estimate	p.6	8.1 Court Approval	p.9
4. Pre-trial Proceedings	p.6	8.2 Settlement of Lawsuits and Confidentiality	p.9
4.1 Interim Applications/Motions	p.6	8.3 Enforcement of Settlement Agreements	p.9
4.2 Early Judgment Applications	p.6	8.4 Setting Aside Settlement Agreements	p.9
4.3 Dispositive Motions	p.6	9. Damages and Judgment	p.9
4.4 Requirements for Interested Parties to Join a Lawsuit	p.6	9.1 Awards Available to a Successful Litigant	p.9
4.5 Applications for Security for Defendant's Costs	p.6	9.2 Rules Regarding Damages	p.9
4.6 Costs of Interim Applications/Motions	p.6	9.3 Pre- and Post-judgment Interest	p.9
4.7 Application/Motion Timeframe	p.7	9.4 Enforcement Mechanisms for a Domestic Judgment	p.9
5. Discovery	p.7	9.5 Enforcement of a Judgment From a Foreign Country	p.9
5.1 Discovery and Civil Cases	p.7		
5.2 Discovery and Third Parties	p.7		
5.3 Discovery in this Jurisdiction	p.7		

10. Appeal	p.10
10.1 Levels of Appeal or Review Available to a Litigant Party	p.10
10.2 Rules Concerning Appeals of Judgments	p.10
10.3 Procedure for Taking an Appeal	p.10
10.4 Issues Considered by the Appeal Court at an Appeal	p.10
10.5 Court-imposed Conditions on Granting an Appeal	p.10
10.6 Powers of the Appellate Court After an Appeal Hearing	p.10
11. Costs	p.10
11.1 Responsibility for Paying the Costs of Litigation	p.10
11.2 Factors Considered When Awarding Costs	p.10
11.3 Interest Awarded on Costs	p.10
12. Alternative Dispute Resolution	p.10
12.1 Views on ADR in this Jurisdiction	p.10
12.2 ADR Within the Legal System	p.11
12.3 ADR Institutions	p.11
13. Arbitration	p.11
13.1 Laws Regarding the Conduct of Arbitrations	p.11
13.2 Subject Matter not Referred to Arbitration	p.11
13.3 Circumstances to Challenge an Arbitral Award	p.11
13.4 Procedure for Enforcing Domestic and Foreign Arbitration	p.11

Lenz & Staehelin is the largest law firm in Switzerland, with over 200 lawyers. Internationally oriented, the firm handles all aspects of international and Swiss law. Languages spoken include English, French, German, Italian, Russian and Spanish. Traditionally, the litigation practice has been a principal player for commercial and corporate disputes in Switzerland. As one of the leading M&A, takeover and shareholders' litigation firms in the country, it has a strong record of success in these areas. The firm is also frequently

retained to act in banking and finance litigation, and represents major corporations and individuals in regulatory enforcement matters and white-collar criminal investigations. It also has significant experience in advising private clients on wealth management and inheritance matters. As one of the largest of the few firms with sizeable offices in Zürich, Geneva and Lausanne, it is in an effective position to defend clients' interests before courts and authorities in the German and French-speaking cantons of Switzerland.

Authors



Martin Burkhardt is a partner who represents parties in commercial litigation and international arbitration. He sits as an arbitrator for Lenz & Staehelin in Zürich and specialises in private clients, technology start-ups and charities. Martin

is a member of the Swiss Bar Association, the Swiss Arbitration Association, the New York State Bar Association and the Arbitration Court of the Swiss Chambers' Arbitration Institution.



Miguel Oural is a partner in the litigation department and divides his time between the firm's offices in Geneva and Lausanne. An expert on national and international complex litigation, he advises individual and corporate clients on various criminal

law matters, including international mutual legal assistance. Other areas of his practice include internal investigations, tort law, employment law and commercial and contract law.



Daniel Tunik is a partner in the litigation and arbitration group of Lenz & Staehelin in Geneva and is active in court litigation and international arbitration. His fields of expertise cover all forms of commercial disputes, notably in the banking sector.

Daniel is also active in the areas of insolvency law, white-collar crime and employment disputes.



Dominique Müller is a litigator who represents corporations and private individuals in proceedings before Swiss courts, administrative authorities and international arbitral tribunals. He particularly focuses on takeover and

corporate litigations as well as M&A and joint venture disputes. Dominique also practises in employment and insolvency law, and advises on internal investigations.

1. General

1.1 General Characteristics of Legal System

Switzerland's legal system is based on civil law, drawing from Germanic and French law traditions. The main source of law is therefore to be found in laws passed by the federal parliament or cantonal parliaments and the ordinances thereto. Besides such rules, doctrine and case law are also relevant sources and are frequently used to determine the scope and meaning of legal provisions, even though they do not give rise to binding precedent as in common law jurisdictions. Civil proceedings follow an adversarial model containing some inquisitorial elements depending on the nature of the proceedings. Legal process is conducted primarily through written submissions. After both parties have filed their written submissions, the court holds a main hearing where oral arguments are presented. The parties may, however, apply that no main hearing shall be held and to submit the closing submissions after evidence is taken. Summary proceed-

ings often require extensive oral argument. Witnesses may be heard on separate occasions, usually by a delegation of the court.

1.2 Structure of Country's Court System

Adjudicating civil matters is a prerogative of the cantons, which each have a two-tier judiciary consisting of Courts of First Instance and appeals courts. Four cantons maintain a separate commercial court, usually at the court of appeals level. The ordinary Courts of First Instance have general jurisdiction. The larger courts have specialised divisions, eg, for family, inheritance, employment, leasing and insolvency matters. At the communal level there are small claims officers who act as mediators and who may decide on small claims.

At the federal level, the Swiss Federal (Supreme) Court deals with challenges against decisions of last instance issued by

the cantonal judiciary in civil matters and those issued by the Federal Patents Court.

1.3 Court Filings and Proceedings

Court filings and proceedings are as a general rule not public. Accredited journalists may gain access to certain elements of the file provided there is an overriding public interest. While court hearings are usually open to the public, there are few instances in which there are persons other than the participants to the proceedings or journalists present. The parties may apply for additional protective measures if they have an overriding interest in keeping certain aspects confidential. The public is excluded when the court tries to bring the parties to a settlement. Court decisions are usually published or otherwise made available on an anonymised basis only.

1.4 Legal Representation in Court

Professionally representing clients before Swiss courts requires admission to the bar, except in certain debt collection, insolvency and tenancy matters. Admission of lawyers to the practice of law and the supervision of their activities lies with the cantons. Admission to any of the cantonal bars qualifies the attorney for practice before any court of Switzerland. Qualified EU lawyers may obtain simplified admission, which is not necessary if the foreign EU lawyer appears only occasionally before a Swiss court and does not have a law practice in Switzerland.

2. Litigation Funding

2.1 Third-party Litigation Funding

Litigation funding by a third-party funder is permitted in Switzerland and there are a number of funders active on the Swiss market. Third-party funders are not subject to regulation.

2.2 Third-party Funding of Lawsuits

Third-party funding is, as a general rule, available for all types of civil lawsuits.

2.3 Third-party Funding for Plaintiffs and Defendants

Third-party funding is available to plaintiffs and defendants.

2.4 Minimum and Maximum Amounts of Third-party Funding

There is no strict minimum or maximum amount a third-party funder will fund. One of the funders specifies a minimum amount of CHF300,000 in a promising case against a solvent defendant. At the other end, litigation funding may also be syndicated.

2.5 Third-party Funding of Costs

There is quite some competition on the Swiss market for litigation funding. While there are some domestic players,

there is also plenty of activity by internationally active litigation funders. Generally, a third-party funder would assume all costs of the litigation, including reasonable attorney fees of the opposing party. In the case of a successful outcome, the funder takes a percentage and recovers the costs. The specific arrangements are, of course, subject to negotiation.

2.6 Contingency Fees

There are very tight restrictions on contingency fee or similar arrangements, originating in Swiss federal ethical rules. Contingency fees as such are prohibited. As regards a *pactum de palmario*, a lawyer is required to collect a fee that fully covers all his costs, plus a modest profit, irrespective of whether his client prevails. In the event of success, the total fee should not exceed the double amount of the minimum permissible fee. Furthermore, a lawyer is required to ask for successive payments as the matter proceeds and may not finance the litigation by working on credit.

2.7 Time Limit for Obtaining Third-party Funding

Swiss law does not foresee limits by when a party to the litigation may obtain third-party funding. Obviously, funding should be secured in good time. There is, however, a time limit on arrangements for a *pactum de palmario*. Such agreements may, under the current practice of the Swiss Federal (Supreme) Court, only be entered into at the outset of the respective lawyer's engagement.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

There is no court-imposed duty of the parties of certain pre-action conduct. There is in particular no duty to respond in a substantive manner to a pre-action letter. Lack of rational conduct before action may, however, impair the legal or reputational situation of a party in subsequent proceedings.

3.2 Statutes of Limitations

Statutes of limitations are considered to be part of Swiss substantive law. The specific periods of prescription depend on the qualification of the claim under Swiss law. There is an absolute period of prescription usually triggered by the act or omission of the debtor and there are shorter relative periods starting from the day the creditor has knowledge of the damage and of its cause. The relative periods usually amount to one year, whereas the absolute periods amount to five, ten or 30 years.

3.3 Jurisdictional Requirements for a Defendant

The most important jurisdictional cases for a defendant to be subject to a civil suit are the general jurisdiction of seat or domicile, contractual agreement of jurisdiction, tort jurisdiction at the place of the tortious act or of damage caused, or a derivative jurisdiction in cases of multiple claims or

multiple parties. Rules of jurisdiction are based on Swiss federal rules and are uniform.

3.4 Initial Complaint

The initial complaint to be filed with the court to initiate a lawsuit is a detailed statement of claims, which should address in a detailed and substantiated manner all relevant facts, as well as any means of proof the claimant is adducing in support of his allegations. The pleadings may be amended for a certain time and will become fixed after a certain point in the proceedings, save for genuinely new facts that must be pleaded by the party wishing to rely on them without delay.

3.5 Rules of Service

Service within Switzerland is a prerogative of the courts and will be carried out usually by means of a specific delivery method in use by the Swiss National Post Company. Under certain circumstances there is a fiction of service even if the respondent has not actually received the documents initiating the proceedings. Service outside the jurisdiction follows the rules agreed by Switzerland with the state in which service is sought, usually a treaty or a multilateral convention. While the respective authority in Switzerland will transmit a request for service to the foreign state, actual service within that state then follows that jurisdiction's rules.

3.6 Failure to Respond to a Lawsuit

If a defendant within Switzerland does not respond to a lawsuit even though he has been properly served by a court having jurisdiction, the proceedings will continue. There is little a defaulting defendant can do in Switzerland against a judgment entered against him in such a proceeding. If a defendant before a Swiss court has turned out to be impossible to be served, be it in Switzerland or abroad, the court may effect service by publication in suitable newspapers. Such publication will have the effect of service.

3.7 Representative or Collective Actions

Swiss law does not recognise the concept of class action. While there are some legislative attempts to facilitate collective resolution of judicial disputes, they do not allow for effective class actions. There are, of course, creative uses of other procedural instruments but they do not amount to a class action, either.

3.8 Requirement for a Costs Estimate

It is generally considered the duty of a Swiss lawyer to advise his client of the estimated costs of a proceeding before entering into it. There is no specific form or formalised requirement under which a Swiss lawyer may discharge such duty to estimate the costs of the potential litigation.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

Pretrial motion practice is a notion foreign to Swiss proceedings. Once the claims are filed with the court, the control of the proceedings is with the court. At any time during the proceedings the parties may approach the court with interim applications or motions provided there are sufficient grounds. The applications may pertain to all relevant aspects of the proceedings.

4.2 Early Judgment Applications

At any time during the proceedings a party can apply for early judgment on all or some of the issues in dispute provided such determination will likely result in substantial savings in terms of time and cost. Pretrial motion practice being a notion foreign to Swiss proceedings, the judge will determine the timing and procedural details. The court in its discretion may also refuse to hear the issue and reserve its resolution in its final decision.

4.3 Dispositive Motions

Dispositive motions made before Swiss courts before the case is fully heard mainly relate to the court's jurisdiction, or rather its lack thereof, as to whether the claimant has a legal interest in having the claims adjudicated, or to some specific material aspects of the case, the decision of which may be dispositive of the action, such as issues of limitation or liability, as opposed to quantum.

4.4 Requirements for Interested Parties to Join a Lawsuit

Interested parties may join a lawsuit in support of one of the parties or against both parties by claiming a better right to the object of the proceedings. Joinder in support of one of the parties may be admitted by the court upon the request of the non-party wishing to join, after hearing the parties. Its decision is subject to appeal. A non-party claiming a better right to the object of the dispute may file claims against both parties of a dispute that is pending before a court.

4.5 Applications for Security for Defendant's Costs

Under certain circumstances, a defendant may ask for an order against the claimant to post a bond with the court to secure the defendant's reasonable attorney fees for defending the claim. The principal conditions for such an order are the claimant's insolvency or the claimant's domicile outside Switzerland, unless there exists a treaty or convention under which the foreign claimant is released from posting a bond in Swiss proceedings.

4.6 Costs of Interim Applications/Motions

As regards costs of interim applications, courts usually ask the applicant to pay a full advance and allocate costs at the end of the interim proceedings or defer their allocation to the final judgment.

4.7 Application/Motion Timeframe

Applications on cost must be made early in the proceedings and before the respective costs are incurred. They will usually be dealt with expeditiously.

5. Discovery**5.1 Discovery and Civil Cases**

Pretrial discovery is a notion foreign to Swiss proceedings and any early taking of evidence is subject to restrictive rules. Once the claims are filed with the court, the control of the proceedings is with the court, including the administration of taking evidence. At any time during the proceedings the parties may ask the court for an early taking of evidence, provided the conditions are met. The court may order a party to produce documents that are relevant for the determination of a disputed fact. A party asking for such production would have to show that there is a factual dispute before the court for the determination of which the document to be produced is relevant and necessary. An early hearing of a witness would essentially require the requesting party to show that the testimony would most likely no longer be available at a later stage, eg, because of old age or poor health of the prospective witness. A decision regarding early administration of evidence is subject to challenge.

There are two paths to a taking of evidence before proceedings are commenced. One is based on the Swiss Data Protection Act and it allows any person to request copies of their own personalised data held by another person or entity. The other path requires a showing of a specific interest in an early taking of evidence, eg, an impending loss of documents that otherwise would be destroyed in the ordinary course of business or very old age or poor health of the prospective witness. If a specific evidence is necessary and sufficient for one party to determine the chances of a potential claim against another party, a court may, at the request of such party, order such evidence to be taken. The request will be determined inter partes in the course of independent summary proceedings.

5.2 Discovery and Third Parties

See 5.1 **Discovery and Civil Cases**.

5.3 Discovery in this Jurisdiction

Pretrial discovery is a notion foreign to Swiss proceedings and any early taking of evidence from third parties is subject to restrictive rules. There is no rule generally requiring a party to disclose documents.

5.4 Alternatives to Discovery Mechanisms

Pretrial discovery is a notion foreign to Swiss proceedings. Once the claims are filed with the court, the control of the proceedings is with the court, which will administer the taking of evidence. In essence, the court will decide which of the

documents submitted by the parties will be admitted in evidence and the court will call the witnesses it deems relevant to be heard before it. Likewise, necessary letters rogatory will be sent by the court and the court will instruct experts to report on issues of fact or foreign law.

5.5 Legal Privilege

Communications between a client and his attorney are privileged, as are attorney work products. Privilege currently only applies to external counsel but there is discussion about extending it to in-house counsel.

5.6 Rules Disallowing Disclosure of a Document

In civil proceedings, a party may not be forced to produce a certain document. In addition, a party may be excused in the case of professional secrets, or if disclosure would expose a person close to the party to penal or civil liability. Unjustified failure by a party to live up to a production order may allow a court to draw adverse inference as regards the respective facts.

6. Injunctive Relief**6.1 Circumstances of Injunctive Relief**

Injunctive relief will be granted by Swiss courts if the applicant renders credible an actual or impending violation of a claim of his, which will likely be causing him a harm that will not be easily remedied. The relief sought must be necessary to avoid the harm and it must reflect a balancing of the interests of the parties. Any measure by which the harm will be avoided may be taken into consideration, including measures by which an illegal situation is corrected. Such measures may include an order to continue performing an agreement in dispute or the handing over of a chattel in dispute. Furthermore, the court may order a freezing of assets, temporary restrictions to be entered into registers, or issue instructions to a third party. Orders aimed at preventing foreign proceedings are met with much reluctance by Swiss courts. A court may not go as far with its interim relief as to grant the applicant full relief on the merits of his underlying claim.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

Injunctive relief is in most cases administered by the cantonal civil courts. Their organisation and practices vary, and often require local knowledge. Many courts are able to decide on injunctive relief, if necessary, within hours or a day. Early instruction and local knowledge are key factors. For example, in Zürich, representatives of judges and lawyers have issued a guide on court access outside office hours. The guide only applies in case of special urgency, ie, if an ex parte interim measure is sought (cf, below). In such cases it is advisable to pre-inform the court by telephone and co-ordinate

the filing of the ex parte interim measure if filing is not possible during regular office hours.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

Injunctive relief, if necessary, can be obtained on an ex parte basis, ie, without notice to the respondent and without the respondent present. The court will only render interim measures on an ex parte basis in cases of special urgency and in particular where there is a risk that the enforcement of the measure will otherwise be frustrated. The court shall summon the parties to a hearing, which must take place immediately. The court will reconsider and issue a new order once the opposing party has been heard or has commented in writing.

If a person has reason to believe that an ex parte interim measure, an attachment of its assets or other measure against him or her will be applied for, he or she may set out his or her position in advance by filing a so-called protective letter. The opposing party shall be served with this protective letter only if such proceedings are initiated. The protective letter becomes ineffective six months after it is filed.

6.4 Applicant's Liability for Damages

The applicant is liable for the damage caused by an unjustified injunction and the granting of an injunction may be subject to his providing sufficient security. The liability may be reduced by the court if the applicant can show that his request for interim relief was made in good faith. The court may in its discretion order the applicant to post security in cases of an ex parte application as well.

6.5 Respondent's Worldwide Assets and Injunctive Relief

As a rule, Swiss courts do not issue injunctive relief in rem against worldwide assets of a respondent out of their jurisdiction. Injunctive relief, such as an attachment, may only be granted with respect to assets belonging to the respondent that are located in Switzerland. This includes a foreign debtor's claim against a creditor domiciled in Switzerland, in particular a foreign bank client against a Swiss bank with respect to a client's bank or securities account.

6.6 Third Parties and Injunctive Relief

Under Swiss law, injunctive relief may be obtained against third parties, provided it is necessary, proportionate and the third party's rights are properly safeguarded.

6.7 Consequences of a Respondent's Non-compliance

The court issuing the injunction often orders the consequences of failure to comply. If the injunction provides for an obligation to act, refrain from acting or to tolerate something, the court may in particular issue a threat of criminal penalty under the Swiss Criminal Court and impose a dis-

ciplinary fine of up to CHF5,000 or CHF1,000 (the latter for each day of non-compliance). If a respondent fails to comply with the terms of an injunction, these consequences will be imposed on the non-compliant party.

7. Trials and Hearings

7.1 Trial Proceedings

The notion of trial is foreign to Swiss proceedings. Once the claims are filed with the court, the control of the proceedings is with the court. The court will order one or several hearings dealing with pleadings, taking of evidence and procedural issues. The judiciary in civil matters is a prerogative of the cantons and although the Code of Civil Procedure has been unified, there remain substantial differences in the cantonal practices. Some of the courts will conduct proceedings in writing with a minimum of hearings, while other courts will ask counsel to appear for a number of hearings.

7.2 Case Management Hearings

See 7.1 Trial Proceedings.

7.3 Jury Trials in Civil Cases

There are no jury trials in Switzerland for civil cases.

7.4 Rules That Govern Admission of Evidence

The notion of trial is foreign to Swiss proceedings. Accordingly, there are no specific rules governing the admissibility of evidence at trial. Swiss procedural law is rather generous in the admission of evidence. The categories of evidence admissible are set out in the Code of Civil Procedure, being witness testimony, documents (including electronic evidence), inspection by the court, expert reports, written declaration in lieu of testimony and interrogation of parties. Evidence needs to be identified and offered during the pleading stage. At a later stage, new evidence is only admissible if the party demonstrates that the evidence could not have been offered during the pleadings of fact.

7.5 Expert Testimony

The notion of trial is foreign to Swiss proceedings. Accordingly, there are no specific rules governing the admissibility of expert testimony at trial. Expert reports produced by the parties for purposes of the proceedings do not carry evidentiary value. For an expert report to be probative, the expert needs to be appointed and instructed by the court.

7.6 Extent to Which Hearings are Open to the Public

As a general rule, hearings are open to the public unless the judge orders otherwise. Transcripts of hearings are not available to the public.

7.7 Level of Intervention by a Judge

Control of the proceedings is with the court. Accordingly, the judge will actively conduct the hearings. Judgment is usually reserved for a later date after the hearing. In exceptional matters the court may deliberate and issue its decision orally on the same day.

7.8 General Timeframes for Proceedings

It is simply not possible to make a meaningful generalised statement for commercial disputes in Switzerland as to the timeframes for proceedings from commencement of claim through to hearings and an ultimate judgment. There are practical advantages in conducting a case before one of the commercial courts, notably that there is only a limited right of appeal directly with the Swiss Federal Court of Last Instance.

8. Settlement

8.1 Court Approval

The parties are free to settle their dispute among themselves, to the extent that they are free to dispose over their claims under the applicable substantive law. The parties may notify the court of the fact that a settlement has been achieved, in which case the court will discontinue the proceedings.

8.2 Settlement of Lawsuits and Confidentiality

If the parties so agree, a settlement of lawsuit can remain confidential.

8.3 Enforcement of Settlement Agreements

Settlement agreements are enforced like contractual claims in the case of a settlement out of court. If the parties wish to give the settlement the effect of a court judgment, they may ask the court to incorporate the relevant terms of the settlement in the court's order by which it discontinues the matter. There is, of course, always the possibility of a partial admission of claims together with a corresponding waiver by the other party that then translates into a judgment to that extent.

8.4 Setting Aside Settlement Agreements

Settlement agreements are set aside by means of an exceptional and narrow appeal. The grounds for appeal are in essence limited to cases of illegality, error and wilful deception.

9. Damages and Judgment

9.1 Awards Available to a Successful Litigant

Judgments are delivered orally, in a short written form containing only the dispositive part, or in writing with full reasons. If none of the parties requests a fully reasoned judgment, the court may leave it with a short-form written order. There is, however, no appeal against a short-form judgment.

The notion of trial being foreign to Swiss proceedings, there is nothing to say about remedies available at the full trial stage. In general, a court has the powers to issue monetary judgments; to issue judgments ordering a party to perform, or refrain from performing, certain acts; to create or terminate legal rights or positions; or to issue declaratory affirmative and negative judgments.

9.2 Rules Regarding Damages

Damages are awarded only to the extent that they are established and proven by the claimant. Punitive damages are not admissible. Swiss courts are very reluctant to award damages on the basis of an estimate, even if the amount of damages cannot be fully proven.

9.3 Pre- and Post-judgment Interest

The interest accruing on a claim depends on the substantive law on which the claim is based. Accordingly, the court will grant, if properly asked, interest to the extent that the applicable substantive law provides. The statutory interest rate under Swiss law for contractual default interest and for interest due on damages suffered is 5% calculated on the basis of a CHF claim. A judgment applying substantive Swiss law operates as an interruption of the statute of limitations, causing the respective prescription periods to run anew.

9.4 Enforcement Mechanisms for a Domestic Judgment

Domestic judgments are enforced as per their dispositive wording in enforcement proceedings before a judge of the local Court of First Instance. Judgments for the payment of money may in the first stage be enforced by local debt collection offices, as long as there is no formal objection by the debtor, in which case the local enforcement judge will have to be seized. Enforceable judgments qualify as a ground for attachment orders pertaining to assets located in Switzerland.

9.5 Enforcement of a Judgment From a Foreign Country

Foreign judgments are enforced in Switzerland on the basis of respective treaties or conventions. The most expedient way is under the Lugano Convention for judgments among its member states, being mainly the EU member states. As with domestic judgments, the enforcement judge of the local Court of First Instance will decide. Judgments for the payment of money may in the first stage be enforced by local debt collection offices, as long as there is no formal objection by the debtor, in which case the local enforcement judge will have to be seized. Enforceable foreign judgements qualify as a ground for attachment orders pertaining to assets located in Switzerland, provided they are eligible for recognition and enforcement under Swiss law.

10. Appeal

10.1 Levels of Appeal or Review Available to a Litigant Party

Switzerland has a two-tiered system of appeals against judgments in civil matters. There is first an ordinary appeal within the respective canton. Against a final judgment of the cantonal Court of Last Instance there is then at the federal level a challenge in civil matters to the Swiss Federal (Supreme) Court.

10.2 Rules Concerning Appeals of Judgments

Swiss civil procedure provides for a cantonal appeal against a judgment of a Court of First Instance as a matter of law, provided the amount still in dispute is at least CHF10,000. The commercial courts existing in four cantons are instituted at the level of the cantonal court of appeals. Decisions by the commercial courts are therefore not subject to appeal within the cantonal judiciary but are considered cantonal decisions of last instance.

10.3 Procedure for Taking an Appeal

The time for filing an appeal is 30 days from the receipt of the judgment by the respective party. In summary proceedings – eg, in the case of an appeal against an attachment order – the deadline is ten days. An appeal must be submitted in all particulars and explain in detail the reasons for which the judgment brought before the court of appeals is defective.

10.4 Issues Considered by the Appeal Court at an Appeal

Swiss cantonal courts of appeal may re-hear the entire case, both as regards the facts and the law, in its discretion and to the extent necessary to issue its own decision.

The Swiss Federal (Supreme) Court may only revisit issues of Swiss federal law, as well as grossly defective (i) statements of facts or (ii) application of other law(s) in the judgment brought before it.

10.5 Court-imposed Conditions on Granting an Appeal

In Switzerland, the right to appeal is given as a matter of law. Accordingly, there are no additional conditions a court may impose before hearing an appeal.

10.6 Powers of the Appellate Court After an Appeal Hearing

Swiss cantonal courts of appeal are free to issue a new judgment within the prayers for relief submitted by the parties, or to remand the matter to the lower court for a new decision in line with its considerations.

The Swiss Federal (Supreme) Court is free to issue a new judgment within the prayers for relief submitted by the par-

ties, or to remand the matter to the lower court for a new decision in line with its considerations.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

In Switzerland, costs usually follow the outcome of the matter. The prevailing party is entitled to reasonable attorneys' fees to the extent that it has prevailed. Court costs are apportioned in the same manner, taking into account any advances paid to the court.

11.2 Factors Considered When Awarding Costs

Costs are awarded on the basis of a cost schedule as issued by the canton of which the deciding court is part, or by the Swiss Federal (Supreme) Court, respectively. Costs awarded are usually based on the amount in dispute, subject mainly to the complexity of the matter and the proceedings.

11.3 Interest Awarded on Costs

As a general rule, interest on reasonable attorneys' fees awarded runs by operation of Swiss law from the day the judgment is notified to the party owing them.

12. Alternative Dispute Resolution

12.1 Views on ADR in this Jurisdiction

Under Swiss civil procedure law, the court procedure is generally preceded by conciliation proceedings before a cantonal conciliation authority. As an alternative, Swiss civil procedure law provides for a mediation procedure in lieu of an ordinary conciliation procedure upon request of the parties. Mediation is possible before and during court proceedings. In proceedings relating to children in family law matters, the court may even ask the parents to attempt mediation. In such instances, the parties are obliged to conduct a mediation procedure. The court proceedings will be suspended for the time of a mediation.

Mediation is an out-of-court and voluntary procedure for conflict resolution. It is characterised by the fact that a neutral third party, the mediator, supports the parties involved in resolving their conflict through negotiations in as fair, constructive and consensual a manner as possible. Due to its voluntary nature, mediation can be discontinued at any time.

Apart from mediation proceedings, Swiss law allows for domestic arbitration. While any claims may be part of a mediation, domestic arbitration is only possible regarding claims over which the parties may freely dispose, in particular monetary claims. The proceedings before an arbitral tribunal are more or less based on the state proceedings and are characterised above all by party agreement, flexibility, se-

crecy and enforceability. Unlike the mediator, the arbitrator has the authority to render a decision binding for the parties.

12.2 ADR Within the Legal System

Generally, a judicial conciliation procedure is mandatory, subject to certain statutory exemptions (eg, where the commercial courts have jurisdiction; cf, **12.1 Views on ADR in this Jurisdiction**). The mediation procedure, on the other hand, is a voluntary alternative. Consequently, the parties are responsible for organising and conducting the mediation. The mediator, who is usually a person qualified in mediation (such as an attorney), is independent from the court. In both the conciliation and mediation procedure, the parties may conclude a settlement agreement. While a settlement agreement reached during a conciliation procedure has the effect of a binding court decision and is also enforceable as such, settlement agreements reached in the course of a mediation procedure must be approved by the conciliation authority or the competent court to have the effect of a binding court decision.

12.3 ADR Institutions

In Switzerland, several institutions have drafted mediation rules and offer mediation services for various disputes: the Swiss Bar Association, the Swiss Association for Mediation, the Swiss Chamber for Commercial Mediation, the Swiss Group of Magistrates for Mediation and Conciliation, and the Swiss Chambers of Commerce. In addition, numerous lawyers undergo special training for mediators and offer mediation services independently within the scope of their regular activities.

Lenz & Staehelin

Brandschenkestrasse 24
CH-8027 Zurich

Tel: +41 58 450 80 00

Fax: +41 58 450 80 01

Email: zurich@lenzstaehelin.com

Web: www.lenzstaehelin.com

The logo consists of a dark grey square with the text "LENZ & STAEHELIN" in white, uppercase letters centered within it.

LENZ & STAEHELIN

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitrations

Switzerland is a jurisdiction very friendly to arbitration. International arbitration in the country is governed by the Swiss Federal Private International Law Act. Switzerland is a party to the New York Convention of 1958 on the recognition and enforcement of arbitral awards and agreements.

13.2 Subject Matter not Referred to Arbitration

Under Swiss law, any economic interest in the disposal of the parties may be subject to arbitration. Corporate disputes are currently outside the scope of arbitration to the extent that the parties cannot show a binding arbitration agreement among all relevant parties. There is a specific change of law currently in Parliament that will allow the resolution of corporate disputes, both Swiss and foreign, on the basis of an arbitration clause included in a corporation's articles.

13.3 Circumstances to Challenge an Arbitral Award

Challenges of Swiss arbitral awards are limited by the restrictive catalogue of Article 190 of the Swiss Federal Private International Law Act, while the recognition and enforcement of foreign arbitral awards may be opposed on the basis of Article V of the New York Convention.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

Domestic arbitration awards may be enforced in Switzerland like judgments of Swiss courts. Foreign arbitration awards may be enforced in Switzerland on the basis of the New York Convention.