

### **President's letter**

"Why should one arbitrate in Switzerland ?" A question that we often hear. We are asked for a simple and honest answer.

"Arbitration is good. Switzerland is good. Arbitration in Switzerland is good." Simple. Too simple.

If parties want to avoid going to state courts, arbitration is indeed the dispute resolution of last resort. But to be honest, if a dispute can be resolved otherwise, before arbitration or pending arbitration, through negotiation or some ADR method, that is even better. And to make arbitration good, we all must make ourselves better, in many different respects. At ASA we have a unique opportunity to work together in that direction.

One of the main attractions of arbitration in Switzerland is that it is in Switzerland. A good place to go, and of course to come home to. But to be honest, there are many other attractive places. Their infrastructure, and also their international arbitration law (not just as it is on the books, but the way it is applied), can be compared to ours. They also have people with good language skills.

We should be happy about this. ASA's primary commitment is to *arbitration* as a service to the parties. That other countries in the world, that some of our neighboring countries, improve and provide a viable alternative to arbitration in Switzerland, is a good thing.

A good and honest answer to the question, "why arbitrate in Switzerland" nowadays can no longer be a short answer. We must compare the international arbitration laws of different countries and give advice on that basis. If we were simply sales people for arbitration in Switzerland (which we are not) these are some of the unique selling propositions (USP) that we would have to list:

Any dispute involving a business interest is *per se* arbitrable in Switzerland, no matter what other laws say.

If an international arbitral tribunal having its seat in Switzerland was set up by an arbitral institution (such as the ICC, or one of the Chambers of Commerce in Switzerland or abroad), any decision by the institution about a challenge of an arbitrator is not reviewable as such by a state court. The arbitration will follow the agreement of the parties also with respect to multi-party arbitration.

The procedure before the arbitral tribunal may be freely determined. There is no presumption that any local state court procedure applies. Many arbitrations follow modern "hybrid" arbitral procedure.

Arbitral tribunals have the primary power to order provisional and conservatory measures. The state courts in Switzerland must provide assistance to arbitral tribunals upon their request, i.e. by issuing orders or letters rogatory.

Arbitral tribunals must apply to the merits the rules of law chosen by the parties, but where none were chosen, will apply the rules of law having the closest connection with the matter in dispute.

Grounds for setting aside an award are strictly limited and comparable to those in the New York Convention, 1958, and in the UNCITRAL Model Law. Such setting aside procedures go straight to the Swiss Federal Supreme Court whose decision is final. The parties may even exclude any setting aside in advance.

There is no Swiss VAT on services by arbitrators.

In sum: **Arbitration** in Switzerland.

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