

Handelskammer Schweiz-Israel
Chambre de Commerce Suisse-Israël
Chamber of Commerce Swiss-Israel



International Commercial Arbitration – Alternative to State Court Litigation for (Israeli and Swiss) Companies?

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I. What is Arbitration (1/6): Introduction

- I. What is Arbitration?
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- **Business but no disputes please!**
 - **Think about dispute resolution**

I. What is Arbitration (2/6): Key Elements of Arbitration

- I. What is Arbitration?
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- Arbitration agreement
 - Arbitrator/arbitral tribunal
 - Choice of the place of arbitration
 - Control of the proceedings
 - Confidentiality
 - Final, binding and enforceable award

I. What is Arbitration (3/6): Alternative Means of Dispute Resolution

- I. What is Arbitration?
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- Arbitration
 - ADR (negotiation, conciliation/mediation, expert determination)

I. What is Arbitration (4/6): Types of Arbitration

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- International commercial arbitration
 - Inter-state arbitration
 - Investment arbitration
 - Other specific arbitrations

I. What is Arbitration (5/6): Administration of the Arbitration

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- Institutional arbitration (ICC, AAA, LCIA, SCCA, IICA, ...)
 - Ad hoc arbitration

I. What is Arbitration (6/6): Arbitration Agreement

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- Place of arbitration
 - Ad hoc/institutional
 - Arbitral tribunal
 - Applicable law/language
 - (Confidentiality)
 - (Pre-arbitration procedure)

II. Statistics IL/CH (1/5): ICC Arbitration – Origin

- I. What is Arbitration?
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Country	Israel		Switzerland	
	<i>2007</i>	<i>2008</i>	<i>2007</i>	<i>2008</i>
Place of Arbitration	1	1	97	83
Claimant	7	8	20	24
Respondent	5	13	19	28
Sole Arbitrator	0	1	27	24
Co-Arbitrator	1	2	64	63
Chairman	0	1	49	65

II. Statistics IL/CH (2/5): ICC Arbitration – Choice of Law

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Choice of Law	2007	2008
English law	11.9%	13%
Swiss law	10.2%	9.5%
German law	7.2%	4.8%
US law	7.1%	6.7%

II. Statistics IL/CH (3/5): ICC Arbitration – Cities of Arbitration

- I. What is Arbitration?
- II. Statistics IL/CH
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Cities	2007	2008
Paris	108	86
London	58	61
Geneva	56	43
Zurich	36	32
Singapore	17	31
Vienna	16	15
New York	15	12

II. Statistics IL/CH (4/5): Swiss Rules Arbitration – Origin

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Origin of Parties	Cases in 2009	All Cases
Switzerland	24%	22%
Western Europe	48%	52%
Eastern Europe and former USSR	6%	6%
Northern America	5%	4%
Asia and Middle East	12%	10%
Others	5%	6%

II. Statistics IL/CH (5/5): Swiss Rules Arbitration – Language

- I. What is Arbitration?
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Language	Cases in 2009	All Cases
English	75%	66%
German	11%	16%
French	9%	11%
Italian	4%	6%
Others	1%	1%

III. Costs (1/1): Swiss Rules Arbitration/ZH Litigation

- I. What is Arbitration?
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Amount in Dispute in CHF	500,000.00	5,000,000.00	15,000,000.00
Arbitration costs* in CHF (sole arbitrator)	38,500.00	119,200.00	205,700.00
Arbitration costs* in CHF (three arbitrators)	89,500.00	274,000.00	464,750.00
Litigation costs* in CHF	44,150.00	139,650.00	277,150.00

* Average costs

IV. Recent Cases (1/5): Arbitration Cases in IL/CH

- I. What is Arbitration?
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 - V. Conclusion
- Medibar Ltd. vs. Epis S.A. and Roche Diagnostics GmbH (2004)
 - Jelmoli Holdings AG vs. Delek Real Estate Ltd. (2008)

IV. Recent Cases (2/5): A Ltd. vs. B AG - Building Industry

- I. What is Arbitration?
 - II. Statistics IL/CH
 - III. Costs
 - IV. Recent Cases
 - V. Conclusion
- A Ltd. (Israeli company)
 - B AG (Swiss company)



IV. Recent Cases (3/5): A Ltd. vs. B AG - Agreement

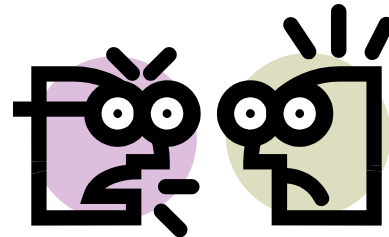
- I. What is Arbitration?
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- Article 1: For contracts entered into by B AG, B AG will pay A Ltd. 3% of the contract sum.
- Article 11: Choice of law: Swiss law
- Article 12: Arbitration in **Zurich, Swiss Rules, sole arbitrator**



IV. Recent Cases (4/5): A Ltd. vs. B AG - Dispute

- I. What is Arbitration?
 - II. Statistics IL/CH
 - III. Costs
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 - V. Conclusion
- A Ltd. claims that B AG has entered into a contract but has not paid the fee agreed upon in the advisory agreement



IV. Recent Cases (5/5): A Ltd. vs. B AG - Arbitration

- I. What is Arbitration?
 - II. Statistics IL/CH
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 - IV. Recent Cases
 - V. Conclusion
- Notice of arbitration
 - Answer to the notice of arbitration
 - Appointment of sole arbitrator
 - Determination of arbitral proceedings
 - Arbitral proceedings: Gathering of facts/legal arguments
 - Award
 - (Enforcement of award)



V. Conclusion (1/3): Why Arbitration?

- I. What is Arbitration?
- II. Statistics IL/CH
- III. Costs
- IV. Recent Cases
- V. Conclusion

- Opportunity to choose the place of arbitration
- Opportunity to choose the arbitral tribunal
- Flexibility of proceedings
- Confidentiality
- Enforcement
- Cost and time

V. Conclusion (2/3): Why in Switzerland?

- I. What is Arbitration?
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- Extensive experience in arbitration
 - Conveniently located in the heart of Europe
 - Excellent infrastructure
 - Well-developed legal system
 - Openness of mind to the different values, cultures and perceptions of foreign parties
 - Neutral

V. Conclusion (3/3): Is Arbitration an Alternative for You?

- I. What is Arbitration?
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 - Yes, but it depends...

Thank you for your attention!