

FRANZ T. SCHWARZ

Professional Biography

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Franz T. Schwarz is a partner of Wilmer Cutler Pickering Hale and Dorr LLP in London and Global Vice-Chair of the Firm's International Arbitration Group. He specializes in international arbitration and dispute resolution as counsel and arbitrator.

Practice

Mr. Schwarz focuses on complex multi-jurisdictional disputes. He has been involved in over 250 arbitrations, as both counsel and arbitrator, and has extensive experience with arbitral practice, procedure and advocacy both in civil and common law systems.

Mr. Schwarz has represented clients in *ad hoc* proceedings and before all major arbitral institutions (including the ICC, ICSID, DIS, LCIA, and the International Arbitral Centre in Vienna), and at numerous seats in Europe, Asia, the Americas, and Africa. Mr. Schwarz has particular experience with corporate, contractual, joint venture and shareholder disputes in the energy, pharmaceutical, infrastructure, oil&gas, telecommunications, finance, media, trade and other sectors. He has handled disputes under a wide variety of applicable laws, including German, Swiss, French, Austrian, Dutch, English, New York, Singaporean, Japanese, Polish, Hungarian, Serbian, Slovakian, Russian, Czech, Ukrainian, Romanian, and Italian law.

Mr. Schwarz also frequently advises and represents parties on the protection of foreign investments under bilateral investment treaties and similar instruments. Mr. Schwarz regularly serves as arbitrator and is included on the roster of several major arbitral institutions. Mr. Schwarz has acted as chairman, sole arbitrator and party-nominated arbitrator under the auspices of all major institutions.

Professional Activities

Mr. Schwarz has lectured on international arbitration at Harvard Law School, the London School of Economics, Vienna University Law School, Zurich University, the European Institute in Saarbrücken/Germany, the Vienna School of Economics, and Johns Hopkins in Bologna, and frequently speaks and publishes on topical issues of international arbitration.

Mr Schwarz is a member of the Board of the Swiss Arbitration Association (ASA), and a member of the Executive Board of the International Arbitral Centre in Vienna, where he currently serves as Vice-President. He is a Member of the Chartered Institute of Arbitrators, the IBA Arbitration Subcommittee on the New York Convention, the DIS, the LCIA, and the Austrian Arbitration Associations. Mr. Schwarz has represented the LCIA working committee to represent the LCIA at the sessions of the UNCITRAL Working Group II on the reform of the model rules in international commercial and investment arbitration.

He is the recipient of the American Arbitration Association's Distinguished Service Award "for his distinguished service and support of international arbitration and mediation."

Professional Qualifications

Mr. Schwarz is a member of the Vienna bar. He graduated as *Magister Juris* from University of Vienna School of Law, Austria (1995, top of class) and has obtained an LL.M. degree from the London School of Economics (with merits), focusing on European Internal Market studies and EU competition law.

Recognition

Mr. Schwarz is regularly featured as a leading authority in international arbitration, including in Chambers Global, Chambers Europe and Chambers UK, which describe him as being “an extremely effective advocate,” “a real leader in the field,” and a “a superstar.” Chambers UK noted that he is “possessed of a razor-sharp written style and shows no mercy in exposing the other side's weaknesses,” while other peer and client reviews praised his “extraordinary strategic sense and masterful judgment” and described him as “analytically and academically superb.”

Mr Schwarz was featured as Litigator of the Week by *American Lawyer*, for his victory for *Swatch Group v Tiffany* (see also below). For his work on this case, he subsequently won the *American Lawyer's* International Dispute of the Year Award.

In January 2010, Mr. Schwarz was awarded the inaugural Swiss Arbitration Association's (ASA) Prize for Advocacy in International Arbitration for his “outstanding talent” as an advocate, describing him as “one of the best lawyers of his generation.”

Recent and Representative Cases

- Mr. Schwarz led the team that recently obtained awards in favor of a U.S. supplier of gas storage infrastructure in a DIS arbitration involving claims of USD 1 billion. The two related arbitrations were seated in Germany and are governed by German law.
- Mr. Schwarz currently represents several investors in the banking sector against a CEE state arising from legislation that interferes with banks' lending portfolio relating to foreign currency exchange rules. The arbitrations are currently pending under the ICSID Convention and Rules. In several of these cases, Mr. Schwarz obtained favorable jurisdictional rulings confirming the non-application of EU law and the Achmea judgment to ICSID arbitration.
- Mr. Schwarz successfully represented a U.S. company in an ICC arbitration seated in Paris regarding the supply of mining infrastructure for several large-scale mining projects around the world, with more than USD 5 billion in dispute.
- Mr. Schwarz successfully represented a Swiss pharmaceutical company regarding the construction and operation of a pharmaceutical manufacturing facility. The arbitration was governed by Austrian law and seated in Vienna and resulted in an award of 120 million in favor of our client.
- Mr. Schwarz has advised and represented several States on adopting legislation regarding direct foreign investment and international dispute settlement, including in Africa and the Caribbean. Mr. Schwarz has also successfully advised *pro bono* several small-scale farmers against dispossession of their farming estates by an African state.
- Mr. Schwarz led the Firm's representation of client Swatch Group in an international arbitration against Tiffany. In December 2013, the tribunal found that Tiffany had breached a long-term cooperation agreement with Swatch Group, that those breaches were material and that Swatch

Group was entitled to prematurely terminate the cooperation. The tribunal proceeded to award Swatch Groups lost profits in the amount of USD \$480 million, and it dismissed counterclaims by Tiffany for USD \$500 million. The decision has attracted global news coverage, from the US to the UK (see e.g. the Wall Street Journal, New York Times and Financial Times) to Germany and Switzerland (see e.g. Der Spiegel and Frankfurter Allgemeine Zeitung).

- Mr. Schwarz also secured a significant victory for a major consumer goods company in a dispute involving a failed strategic alliance (under ICC Rules, sited in London, with German law applying).
- Mr Schwarz secured a significant victory for a South African media company in a joint venture dispute in Germany, under DIS Rules, relating to the establishment of radio mobile broadcasting infrastructure.
- Mr. Schwarz secured a favourable outcome for a major global airline operator in a joint venture dispute, in an ad hoc arbitration sited in Germany.
- Mr. Schwarz has also obtained a series of favourable awards in the firm's representation of a leading telecommunications company in a series of joint venture disputes in Eastern Europe, sited in Vienna; and has advised a multinational service company on investment protection claims against a Central European state.
- Mr. Schwarz has played a significant role in the firm's successful representation of a leading European telecommunications company in an arbitration involving the break-up of a joint venture—the considerable amounts involved in this dispute made it the largest ICC arbitration in history. He also represented a major telecommunications company in a multi-jurisdictional dispute over a joint venture company in Switzerland and helped to obtain a victory for the client in a highly-expedited procedure in less than three months.

Publications

Books and Book Contributions

Contractual Performance and Covid-19: A Global Comparative Analysis (co-editor, Kluwer 2020)

Das Verfahren vor dem Schiedsgericht (ZPO §§ 594-602), in: Handbuch des Österreichischen Schiedsrechts, Vol. 2., Rechberger/Oberhammer/Liebscher (Hrsg), (Springer Verlag, 2015)

A Guide to the ICDR International Arbitration Rules, Oxford University Press (2nd ed. March 2018).

Commentary on the International Rules of the American Arbitration Association, in: Weigand (ed.), Practitioner's Handbook on International Arbitration (2nd ed. Oxford University Press, March 2010)

The Vienna Rules -- A Commentary on International Commercial Arbitration in Austria, (Kluwer Law International, January 2009, 1053p.) (Second edition forthcoming)

System and Theory: A New Approach to Arbitration (Kluwer, forthcoming)

Global Arbitration Review's Guide to Advocacy (1st to 3rd editions, co-author: Opening Presentations at the Oral Hearing)

Articles

Amiable Compositeur: Equitable Dispute Resolution Clauses in Common and Civil Law Jurisdictions (with Matteo Angelini, in publication)

Groundhog Day: Repeating the Arbitration After the Replacement of An Arbitrator (in publication)

Multi-Lingual Courts in Germany and France, Ecolex (Manz Austria, 2011), with Maxi Scherer.

Protecting Confidential Information in International Arbitration, Exolex (Manz Austria, 2011), with Olga Braeuer.

Solving the § 1782 Puzzle: Bringing Certainty to the Debate Over 28 U.S.C. § 1782's Application to International Arbitration, 46 Stanford J. Int'l Law (2011).

Arbitration in: Austria – Recent Case Law Applying the New Austrian Arbitration Act, in: The European and Middle Eastern Arbitration Review, Global Arbitration Review (2010)

The Limits of Party Autonomy in International Arbitration, in: International Arbitration Forum Vienna, (Eleven International Publishing, December 2009)

Arbitration in: Austria – Legal Changes and Trends, in: The European and Middle Eastern Arbitration Review, Global Arbitration Review (2009)

The Procedural Ordre Public And The Internationalization of Public Order In Arbitration, Austrian Arbitration Yearbook 2008, Manz (2008)

Arbitration in: Austria – Legal Changes and Trends, in: The European and Middle Eastern Arbitration Review, Global Arbitration Review (2008)

The New Vienna Rules, Arbitration International Vol 23 No 4 (2007)

Arbitration in: Austria – Legal Changes and Trends, in: The European and Middle Eastern Arbitration Review, Global Arbitration Review (2007)

Enforcing Foreign Arbitral Awards in England, Tagungsband DIS, Dresden 2007

Arbitration in Germany, International Comparative Legal Guide to International Arbitration, Global Legal Group (2007, with Hanno Wehland)

Arbitration in Germany, International Comparative Legal Guide to International Arbitration, Global Legal Group (2006)

Arbitration in Germany, International Comparative Legal Guide to International Arbitration, Global Legal Group (2004)

The Taking of Evidence in International Commercial Arbitration, International Comparative Legal Guide to International Arbitration, Global Legal Group (2003, with Wendy Miles)

Europarecht als Steuerschlupfloch -- Die EuGH Judikatur als Wiederaufnahmegrund im Abgabenverfahren, Ecolex 1998, 52 (Teil 1) und Ecolex 1998, 165 (Teil 2) (with Friedrich Fraberger).

Lectures and Speaking Engagements

Institutional Arbitration in Times of Covid-19, Online Webinar with VIAC, Stockholm Arbitration Center, DIS and Milan, November 2020

The Future of Commercial and Investment Arbitration in the Life Sciences Sector, Paris Arbitration Week, June 2020

Virtual Hearings: Efficient Proceedings in Times of A Pandemic, VIAC, May 2020

4th Eric Bergsten Lecture, Systemic Case Management and Burden of Proof, Vienna, March 2016

2n Annual Global Arbitration Review Live in Vienna, Panelist, Vienna October 2018.

Arbitration in Germany, Queen Mary College and DIS Colloquium, London, 1-2 September 2013

The Leading Arbitrators' Symposium, 26 March 2013, Vienna: Arbitral Conduct in Commercial and Investment Arbitration

The Inaugural Eric Bergsten Lecture: The Future of Arbitration, panelist, 24 March 2013, Vienna

UNCITRAL Conference, Reform of the UNCITRAL Notes on Organising Arbitral Proceedings, 23 March 2013

University of Belgrade Symposium, Theoretical Bases for Due Process in International Arbitration, 9 March 2013

Gala event honoring Dr Werner Melis, former president of the VIAC, speaking on 'The Future of the Vienna Rules', September 2011, Vienna.

ICC YAF Symposium, How Much Should the Institution Intervene in the Process?, 1-3 July 2011, Paris.

Equity Decisions in International Arbitration, Austrian-Polish Bilateral Conference, 17 June 2011, Warsaw.

Current Developments in the Setting Aside of Awards, Belgrade University, 8 April 2011

ICC Symposium on Arbitration and Bankruptcy, Paris, 4 April 2011

Is Investor State Arbitration Becoming Too Costly and Burdensome for Investors, Frankfurt Investment Treaty Conference, Queen Mary School of International Arbitration, 14 March 2011

Insolvency and Arbitration, *Petersberger Schiedstage*, Bonn, February 2011

Current Issues in International Arbitration, University of Saarbruecken, 18-19 February 2011

Arbitration Update – Corporate Counsel Conference
Business Circle RuSt 2010, Austria, 16 October 2010

Trends in the Enforcement of Awards,
IBA Annual Conference, Vancouver, 8 October 2010

The Americanization of International Arbitration – Myth or Reality, DIS
Cologne, Germany, 9 June 2010

An Introduction to International Arbitration, London School of Economics
8 June 2010

Introduction to International Commercial Arbitration,
Lecturer, Johns Hopkins University, Bologna (May 2010)

Kolloquium in International Arbitration
University of Zurich, 3-5 May 2010

Advance International Arbitration Training, Center for Commercial Law Studies,
Queen Mary University of London, 26-27 April 2010

Master Programm: International Arbitration
Wirtschaftsuniversität Wien, January 2010

Disclosure of Potential Conflicts of Interest, International Bar Association: 2009 Annual Conference
Madrid, October 2009

AIJA: Arbitral Institutions: What Does Really Count for Users?
Budapest, August 2009

An Introduction to International Arbitration
Visiting Scholar Summer Program, London School of Economics (June 2009)

Juris Conferences: The Leading Arbitrators' Symposium
Vienna, April 2009

The Limits of Party Autonomy, University of Vienna Law School: 2008 Vienna International
Arbitration Forum (21 November 2008)

Reconciling Common and Civil Law Traditions in International Arbitration, The Lawyer Conference,
London (21 October 2008)

Arbitration Update,
Business Circle RuSt 2008, Rust (16 October 2008)

National Law and International Standards Under the New York Convention
German-American Lawyer's Association Annual Conference, Hamburg (20 September 2008)

International Arbitration: Is Russia Different?
IAYL Conference 2008, Moscow (27 June 2008)

An Introduction to International Arbitration
Visiting Scholar Summer Program, Washington College of Law (27 May 2008)

The New York Convention: Trends and Current Issues
Vienna Arbitration Days, Austrian Academy of Science, Vienna (1 February 2008)

Causes celebres -- Famous Arbitral Awards,
Ph.D. Seminar, University of Zurich (28 November – 1 December 2007)

Thinking Outside the Box: Tailor-made Arbitrations,
ICDR Y&I Conference, Paris (18 November 2007)

Tactical Choices in Appointing Arbitrators,
German Institution for Arbitration/DIS 40, Cologne (24 October 2007)

Designing Good ADR & Arbitration Clauses & Maintenance Dispute Case Study
Global Aviation Law Seminar, London (10 September 2007)

Experts in International Arbitration,
Crown Office Chambers and PriceWaterhouseCoopers, London (4 July 2007)

Effective Management of Litigation Risks Through Arbitration
BITCOM Conference, Berlin (27 June 2007)

Introduction to International Arbitration
Washington University, College of Law (London, 12 June 2007)

International Enforcement of Arbitral Awards,
Cairo Regional Arbitration Centre, Egypt (7 May 2007)

International Enforcement of Awards,
German Arbitration Institution (DIS), Dresden (19 April 2007)

The Duties of the Arbitrator, ICDR Y&I Conference,
Austrian Supreme Court, Vienna (8 April 2006)

Substantive Claims In Arbitration Against States

-- Fair and Equitable Treatment and Denial of Justice,
Austrian Arbitration Association, Vienna (12 February 2007)

Arbitration against States and Denial of Justice -- Where the Procedural Meets the Substantive,
23rd AAA/ICC/ICSID Joint Colloquium on International Arbitration,
Washington D.C. (17 November 2006)

International Arbitration -- The Civil Law Perspective,
Global Counsel Conference, New York (15 September 2006)

Current Issues in International Arbitration, Visiting Lecturer in Law, University of Zurich
(Spring/Summer 2006)

Arbitration, Criminal Law and Public Policy -- the Civil Law Perspective,
The Chartered Institute of Arbitrators Lecture Series, London (11 July 2006)

Conducting an Arbitration under the New Austrian Arbitration Law, Linde Seminare,
Vienna (23 June 2006)

Appointing the Arbitrator, ICDR Y&I Conference,
Vienna (8 April 2006)

Are the Vienna Rules Still Satisfactory -- Suggestions, Criticism and Possible Amendments,
International Arbitral Centre of the Austrian Federal Chamber of Commerce,
30 Year Anniversary Program, Vienna (October 2005)

Disclosure and Discovery in International Arbitration, Panel Moderator,
ICDR Y&I Conference, The Harvard Club, New York (2005)

Impartiality and Independence in International Arbitration,
Pepperdine University, London (2005)

Delaying Tactics in International Arbitration, Panel Moderator,
ICDR Y&I Conference, Vienna (2005)

Introduction to International Commercial Arbitration,
Lecturer, Johns Hopkins University, Bologna (2005)

The New IBA Guidelines on Conflicts in International Arbitration,
MAA Conference, Vienna (2004)

Witness Testimony in International Arbitration,
ICDR Y&I Conference, Paris (2004)

Cultural Differences in International Law,
Pepperdine University, London (2002 - 2004)