



Swiss Arbitration Centre Issues New Rules for Trust, Estate and Foundation Disputes

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Key Take-aways

- 1.** On 1 July 2025, the Swiss Arbitration Centre's new Supplemental Swiss Rules for Trust, Estate and Foundation Disputes (TEF Rules) entered into force.
- 2.** The TEF Rules offer a practical framework for resolving private wealth disputes through arbitration, designed to address the specificities of trust, estate and foundation matters.
- 3.** The TEF Rules are accompanied by model arbitration clauses tailored for use in wills, inheritance contracts, trust deeds and foundation statutes.

As reported in our Newsflash of 27 May 2025, the Swiss Arbitration Centre recently launched new Supplemental Swiss Rules for Trust, Estate and Foundation Disputes (**TEF Rules**). These rules entered into force on 1 July 2025.

In this Newsletter, we discuss the relevance of arbitration in private wealth disputes and set out the key elements of the TEF Rules in more detail.

The Rise of Arbitration in Private Wealth Disputes

Arbitration is a **private form of dispute resolution** in which parties agree to submit their dispute to an arbitral tribunal, whose decision is binding and internationally enforceable under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (**New York Convention**). While arbitration is traditionally the preferred method for resolving *commercial* disputes, arbitration is gaining traction in private wealth matters, too, particularly those involving trusts, estates and foundations.

This shift is driven by increasingly international family structures, cross-border estate planning and the desire for confidential, flexible and speedy procedures. Parties involved in private wealth disputes are turning to arbitration to resolve their disputes outside of public courtrooms, often in highly sensitive contexts involving significant assets and diverging interests.

The **extension of arbitration to trust, estate and foundations matters** is notable. Arbitration agreements are, by nature, consensual; they require mutual agreement between two or more parties. However, many trust and estate structures are based on unilateral legal instruments such as wills, trust declarations or foundation statutes. This raises the fundamental question: Can a clause inserted unilaterally by a testator or founder bind heirs or beneficiaries who never expressly agreed to arbitrate?

Arbitration is gaining traction in private wealth matters.

Swiss law offers a progressive answer. Since 1 January 2021, amendments to the Swiss Civil Procedure Code (**CPC**) and the Swiss Private International Law Act (**PILA**) explicitly confirm that arbitration clauses in unilateral legal instruments such as wills, trust deeds and foundation statutes (**Unilateral Arbitration Clause**) are valid under Swiss law, provided that the seat of arbitration is in Switzerland.

It should be noted that the exact scope of Unilateral Arbitration Clauses may give rise to controversy. Are legal heirs – who are entitled to forced heirship rights under Swiss inheritance law but have been excluded by the testator's will – bound by an arbitration clause contained in the will, when they want to initiate proceedings to claim their statutory entitlements? Swiss courts have yet to rule on the issue, and commentators question whether an arbitration clause would be binding in such a case.

Specific Arbitration Rules for Private Wealth Disputes: The TEF Rules

Arbitration agreements often specify a set of procedural rules to govern the arbitration process. These rules are typically issued by arbitral institutions, which also administer arbitration proceedings conducted under their rules. In Switzerland, the Swiss Arbitration Centre is the leading arbitration institution. Its procedural rules are the Swiss Rules of International Arbitration (**Swiss Rules**).

The TEF Rules provide a dedicated framework for private wealth arbitration.

Recognizing the growing use of arbitration in private wealth matters, the Swiss Arbitration Centre has developed a **dedicated framework** to address the unique procedural and legal challenges that arise in such matters.

The TEF Rules are a short set of provisions available in English, German, French and Italian. They include model arbitration clauses that can be used by testators, founders and settlors and are accompanied by an Explanatory Note.

Scope of Application of the TEF Rules

The TEF Rules generally **apply in three scenarios**.

First, the TEF Rules apply where a Unilateral Arbitration Clause provides for arbitration under the Swiss Rules. In such cases, the TEF Rules apply automatically, even if the arbitration clause does not specifically refer to them.

Where the arbitration clause is part of a contractual agreement such as a succession pact, the TEF Rules do not automatically apply, even if the dispute concerns trusts, estates or foundations. The parties, the arbitral tribunal and the Swiss Arbitration Centre must assess whether the clause qualifies as a Unilateral Arbitration Clause. According to the Swiss Arbitration Centre's Explanatory Note, in case of doubt, it may be prudent to assume that it is a Unilateral Arbitration Clause and that, therefore, the TEF Rules apply.

Second, the TEF Rules apply where an arbitration agreement expressly refers to them or their predecessor rules, the Introductory Rules of the Swiss Association for Arbitration in Inheritance Matters.

Third, the TEF Rules apply where parties expressly agree to arbitrate under them, irrespective of whether an arbitration agreement already exists or whether its terms would otherwise trigger the application of the TEF Rules.

The TEF Rules supplement the Swiss Rules. This means that where the TEF Rules are silent, the relevant provisions of the Swiss Rules apply by default.

Information, Notification and Representation of Entitled Persons

Disputes relating to trusts, estates or foundations often impact an array of individuals who may not (at least initially) be parties to the dispute, such as heirs, beneficiaries, legatees or even underlying companies (e.g. family-owned companies). To safeguard their interests, many jurisdictions require the mandatory joinder of certain affected parties in estate-related legal proceedings.

Under the TEF Rules, all entities or persons, born or unborn, whose rights or entitlements might be affected by the dispute (**Entitled Persons**) must be **informed** of the arbitration proceedings and given an opportunity to have their interests **represented**. This may prove crucial not only for the acceptance of any award rendered in the arbitration, but also for any potential enforcement of the arbitral award in Switzerland and abroad.

The TEF Rules assign the responsibility for identifying and ensuring representation of Entitled Persons to the parties involved in the arbitration. Specifically, the claimant must include in the Notice of Arbitration a list of all Entitled Persons, along with relevant details such as their relationship to the dispute and contact information where available. The claimant must also identify any Entitled Person which may require legal representation (e.g. unborns, minors or those otherwise lacking capacity) and propose how such representative should be appointed. The respondent is then required to comment in the Answer to the Notice of Arbitration.

Following this, the Secretariat of the Swiss Arbitration Centre will notify the Notice of Arbitration and the Answer to the Entitled Persons identified by the parties. Notified Entitled Persons will then need to decide whether to participate in the arbitration as an additional party, in another capacity or not to participate at all.

The Entitled Persons are bound by the confidentiality obligations of Article 44 of the Swiss Rules.

Appointment of the Arbitral Tribunal

The **appointment of the arbitral tribunal** under the TEF Rules basically follows the standard procedure of the Swiss Rules. In addition, unless the arbitration agreement or Unilateral Arbitration Clause assigns appointment exclusively to the Arbitration Court of the Swiss Arbitration Centre (**‘Court’**), Entitled Persons identified in the dispute have the **right to be heard** on the tribunal appointment. This applies irrespective of whether the Entitled Persons have chosen to participate in the proceedings. Importantly, merely commenting on the appointment of the arbitral tribunal does not make them a party to the arbitration.

Entitled Persons may comment on, *inter alia*, the number of arbitrators, the appointment procedure, the arbitrators’ qualifications, the names of the arbitrators designated by the parties and any disclosures of the prospective candidates. The Court will consider such comments or objections when

confirming arbitrators and may refuse their confirmation if justified.

Entitled Persons must submit specific requests to receive information about the status of the appointment process or to access relevant correspondence.

Where not all Entitled Persons are represented or if the circumstances warrant it, the Court may appoint some or all tribunal members.

Applicable Substantive Law

Further to Article 35 of the Swiss Rules, the arbitral tribunal decides the case by applying the rules of law agreed upon by the parties to the dispute, or, in the absence of a choice of law, by applying the rules of law with which the dispute has the closest connection.

This rule may give rise to tension in estate matters where specific conflict-of-law rules are often mandatory and constrain both the decedent and heirs in choosing the law governing the estate.

To address this potential issue, Article 4 of the TEF Rules **excludes estate matters** from the scope of Article 35 of the Swiss Rules. Accordingly, the applicable substantive law is determined by the relevant conflict-of-law rules, such as the PILA in Switzerland. It is important to note that the relevant “connecting factor” for the scope of these rules may differ depending on jurisdiction. For instance, under the EU Succession Regulation, the key connecting factor is the decedent’s last habitual residence, whereas under the Swiss PILA, it is the decedent’s last (civil) domicile. In some jurisdictions, testators may also choose the law applicable to their estate through a valid choice of law. As a result, the governing law may differ from case to case, and parties should give careful consideration to the relevant conflict-of-law rules in each instance.

Considerations When Drafting Unilateral Arbitration Clauses

The TEF Rules are accompanied by **model arbitration clauses** tailored for use in wills, inheritance contracts, trust deeds and foundation statutes. These model clauses assist drafters in creating arbitration agreements that are clear and reduce the risk of future disputes over jurisdiction or enforceability.

Model clauses assist drafters in creating effective arbitration agreements.

However, parties wishing to include Unilateral Arbitration Clauses in their legal instruments should remain mindful of **potential limitations**. While the TEF Rules aim at ensuring representation of all Entitled Persons to facilitate enforceability of arbitral awards, their recognition and enforcement may still face legal hurdles in certain jurisdictions. In particular,

the so-called “firewall” provisions in many offshore trust jurisdictions, which are designed to shield local trusts from the application of foreign laws if they conflict with local trust law or public policy, may present obstacles to enforcing arbitral awards. Therefore, when drafting unilateral arbitration clauses, particular attention should be paid to the applicable law and the arbitration law of all jurisdictions where enforcement might potentially be sought.

Looking Ahead

With the TEF Rules entering into force, Switzerland is further cementing its position as a leading venue for resolving private wealth disputes. The rules are specifically designed to address the unique challenges faced by families, trustees and beneficiaries, especially the complexity of multi-jurisdictional proceedings, the need for confidentiality and the importance of enforceable decisions. As a result, the TEF Rules are expected to encourage greater use of arbitration in trust, estate and foundation matters.

Apart from actively shaping the future of this field with their work in the Swiss Arbitration Centre and within STEP, our private wealth and arbitration teams at Schellenberg Wittmer are already acting in an array of private wealth arbitrations and have developed significant expertise in this area. Our team is well-versed in the procedural and substantive issues unique to these disputes, both as counsel and as arbitrators. We expect the volume of private wealth arbitrations to grow steadily in the years ahead, and we remain committed to providing clients with expert advice and representation.

For assistance with drafting Unilateral Arbitration Clauses or for advice on disputes in relation to private wealth matters, please contact our Schellenberg Wittmer International Arbitration and Private Wealth Practice Group.



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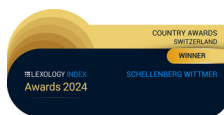
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