

VIAC – Questionnaire for Arbitrators

1. Name: Bernhard Berger

2. Citizenship: Swiss

3. Contact information:

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4. Current position:

Partner

5. Education:

LL.M., Harvard Law School (2001)

Ph.D. (doctor iuris), University of Berne Faculty of Law (2000)

Admission to the Bern and Swiss Bar (1997)

JD Degree, University of Berne Faculty of Law (1997)

6. Practiced experience in arbitration

- How many arbitrations have you participated in (domestic/international); under which Rules?
169 cases as at 31 October 2019, out of which 152 international arbitrations, 17 domestic arbitrations, 70 cases under the ICC Rules, 63 cases under other international institutional rules (among others, 7 cases under the CAS Code, 3 cases under the LCIA Rules, 1 case under the SIAC Rules, 47 cases under the Swiss Rules, 1 case under the WIPO Rules, 2 cases under the ICDR/AAA Rules, 10 cases under the UNCITRAL Arbitration Rules).
- How often have you acted as Chairman?
48 cases as presiding arbitrator
- How often have you acted as Sole Arbitrator?
19 cases as sole arbitrator
- How often have you acted as Co-Arbitrator?
28 cases as co-arbitrator
- How often have you acted as Counsel?
25 cases as counsel
- How often have you acted in a different function (e.g. Administrative Secretary)?
49 cases on other functions (mainly as legal expert on Swiss law matters and tribunal secretary)

7. Publications and other activities in arbitration (e.g. training sessions, seminars, conferences, articles and others):

Monographs and Textbooks

- International and Domestic Arbitration in Switzerland, 3rd edn, published by Staempfli, C.H. Beck, Hart Publishing and Manz, 2015. Co-Author: Franz Kellerhals (890 pages)
- International and Domestic Arbitration in Switzerland, 2nd edn, published by Sweet & Maxwell, 2010. Co-Author: Franz Kellerhals (668 pages).

- Internationale und interne Schiedsgerichtsbarkeit in der Schweiz, Bern/Vienna 2006 (810 pages). Co-Author: Franz Kellerhals

Reviews of Case-Law

- Die Rechtsprechung des Bundesgerichts zum Zivilprozessrecht im Jahr 2016, Veröffentlicht im Band 142, 3. Teil: Schiedsgerichtsbarkeit, ZBJV 2018, pp. 378-396
- Die Rechtsprechung des Bundesgerichts zum Zivilprozessrecht im Jahr 2015, Veröffentlicht im Band 141, 3. Teil: Schiedsgerichtsbarkeit, ZBJV 2017, pp. 288-298
- Die Rechtsprechung des Bundesgerichts zum Zivilprozessrecht im Jahr 2014, Veröffentlicht im Band 140, 3. Teil: Schiedsgerichtsbarkeit, ZBJV 2016, pp. 562-574
- Die Rechtsprechung des Bundesgerichts zum Zivilprozessrecht im Jahr 2013, Veröffentlicht im Band 139, 3. Teil: Schiedsgerichtsbarkeit, ZBJV 2015, pp. 290-300
- Die Rechtsprechung des Bundesgerichts zum Zivilprozessrecht im Jahr 2012, Veröffentlicht im Band 138, 3. Teil: Schiedsgerichtsbarkeit, ZBJV 2014, pp. 56-72
- Die Rechtsprechung des Bundesgerichts zum Zivilprozessrecht im Jahr 2011, Veröffentlicht im Band 137, 3. Teil: Schiedsgerichtsbarkeit, ZBJV 2013, pp. 271-287
- Die Rechtsprechung des Bundesgerichts zum Zivilprozessrecht im Jahre 2010, Veröffentlicht im Band 136, 3. Teil: Schiedsgerichtsbarkeit, ZBJV 2012, pp. 159-181
- Die Rechtsprechung des Bundesgerichts zum Zivilprozessrecht im Jahre 2009, Veröffentlicht im Band 135, 3. Teil: Schiedsgerichtsbarkeit, ZBJV 2011, pp. 551-575
- Die Rechtsprechung des Bundesgerichts zum Zivilprozessrecht im Jahre 2008, Veröffentlicht im Band 134, 3. Teil: Schiedsgerichtsbarkeit, ZBJV 2010, pp. 230-251. Co-Author: Franz Kellerhals
- Die Rechtsprechung des Bundesgerichts zum Zivilprozessrecht im Jahre 2007, Veröffentlicht im Band 133, 3. Teil: Schiedsgerichtsbarkeit, ZBJV 2009, pp. 373-385. Co-Author: Franz Kellerhals
- Die Rechtsprechung des Bundesgerichts zum Zivilprozessrecht im Jahre 2006, Veröffentlicht im Band 132, 3. Teil: Schiedsgerichtsbarkeit, ZBJV 2008, pp. 223-235. Co-Author: Franz Kellerhals
- Die Rechtsprechung des Bundesgerichts zum Zivilprozessrecht im Jahre 2005, Veröffentlicht im Band 131, 3. Teil: Schiedsgerichtsbarkeit, ZBJV 2007, pp. 198-206. Co-Author: Franz Kellerhals
- Die Rechtsprechung des Bundesgerichts zum Zivilprozessrecht im Jahre 2004, Veröffentlicht im Band 130, 3. Teil: Schiedsgerichtsbarkeit, ZBJV 2006, pp. 53-68. Co-Author: Franz Kellerhals

Articles

- Insolvenz und Schiedsvereinbarung in der Schweiz, ASA Bull. 2018, pp. 834-845
- Consequences of a failure to comply with compulsory pre-arbitral steps, Revista Brasileira de Arbitragem, Volume XIV Number 56 2017, pp. 198-205
- No Force of Res Judicata for an Award's Underlying Reasoning, Note on 4A_633/2014 of 29 May 2015, ASA Bull. 2015, 642-657
- Negative effect of competence-competence revisited, Note on 4A_560/2013, Judgment of 30 June 2014, ASA Bull. 2014, 539-542
- Interest in International Arbitration – An Overview, IBLJ 2014, 361-371. Co-Author: Ellen Moltzahn
- Rights and Obligations of Arbitrators in the Deliberations, ASA Bull. 2013, pp. 244-261
- Konkurrierende, optionale und asymmetrische Schieds- und Gerichtsstandsklauseln, Jusletter 13. Mai 2013 (www.jusletter.weblaw.ch)
- The new Swiss domestic arbitration law: potential effects on international arbitration in Switzerland, SchiedsVZ 6/2011, pp. 301-306
- Notification and Deposit, Publication, Confidentiality and Preservation of the File, in: Post Award Issues, ASA Special Series No. 38, edited by Pierre Tercier, Huntington, 2011, pp. 75-92
- Arbitration and Politics: Analysis of a Peculiar Arbitration Between Libya and Switzerland, International Journal of Arab Arbitration, Vol. 3/2011, pp. 55-63. Co-Author: Stefanie Pfisterer
- Kritische Gedanken zur Revision von Art. 7 IPRG im Lichte eines praktischen Beispiels, ASA Bull. 2011, pp. 33-44
- Security for Costs: Trends and Developments in Swiss Arbitral Case Law, ASA Bull. 2010, pp. 7-81
- Appeals in International Arbitration under the New Swiss Federal Tribunal Statute, in: Christoph Müller

(ed.), *New Developments in International Commercial Arbitration 2007*, Zurich/Basel/Geneva 2007, pp. 79-90

- Erste Revision im 12. Kapitel IPRG über die Internationale Schiedsgerichtsbarkeit: Lis pendens vor Schiedsgerichten in der Schweiz künftig kein Sistierungsgrund mehr, *ZBJV* 2007, pp. 151–156
- Widerklage und Verrechnung nach den Swiss Rules of International Arbitration, in: François Bohnet/Pierre Wessner (Éds.), *Mélanges en l'honneur de François Knoepfler*, Bâle/Genève/Munich 2005, pp. 207–226. Co-Author: Franz Kellerhals
- Iura novit arbiter, in: Eugen Bucher/Claus-Wilhelm Canaris/Heinrich Honsell/Thomas Koller (Hrsg.), *Norm und Wirkung*, Festschrift für Wolfgang Wiegand zum 65. Geburtstag, Bern 2005, pp. 387–405. Co-Author: Franz Kellerhals
- Erste Erfahrungen mit den Swiss Rules of International Arbitration, *Anwaltsrevue* 4/2005, pp. 161–163. Co-Author: Franz Kellerhals
- Prozesskostensicherheit (cautio iudicatum solvi) im Schiedsverfahren, *ASA Bull.* 2004, pp. 4–21
- Swiss Rules of International Arbitration – Ein Überblick zur neuen Internationalen Schiedsordnung der Schweizerischen Handelskammern, in *dubio* 2004, pp. 14–25. Co-Author: Franz Kellerhals
- Jederzeitiges Kündigungsrecht des Schiedsrichters? *ASA Bull.* 2002, pp. 5–25
- Terms of Reference – Ihre Bedeutung für das Schiedsverfahren, *recht* 2002, pp. 24–36. Co-Author: Franz Kellerhals

Commentaries

- Article 186 of the Swiss Private International Law Act, in: Manuel Arroyo (ed.), *Arbitration in Switzerland, The Practitioner's Guide*, 2nd edn. Alphen aan den Rijn 2018
- Article 186 of the Swiss Private International Law Act, in: Manuel Arroyo (ed.), *Arbitration in Switzerland, The Practitioner's Guide*, Alphen aan den Rijn 2013
- Articles 18-21 of the Swiss Rules, in: Tobias Zuberbühler/Christoph Müller/Philipp Habegger (Eds.), *Swiss Rules of International Arbitration: Commentary*, 2nd edn, Zurich 2013. Co-Author: Stefanie Pfisterer
- Articles 18-21 of the Swiss Rules, in: Tobias Zuberbühler/Christoph Müller/Philipp Habegger (Eds.), *Swiss Rules of International Arbitration: Commentary*, Zurich 2005

Editions

- *Inside the Black Box: How Arbitral Tribunals Operate and Reach Their Decisions*, ASA Special Series No. 42, Huntington 2014. Co-Editors: Bernhard Berger and Michael Schneider

8. Membership in arbitral institutions / functions in arbitral institutions/organizations:

Panel of Arbitrators of ICC Switzerland

Arbitration Court and Special Committee of the Swiss Chambers' Arbitration Institution (2009-2019)

Fellow of The Dispute Board Federation (FDBF)

Vice-President of Swiss Arbitration Association (ASA), since 2013

Lecturer at the University of Berne Faculty of Law (2007-2014)

Lecturer at Schweizerische Richterakademie (SRA) / Académie Suisse de la magistrature (ACSM), University of Lucerne (since 2009)

Member of the Editorial Board of Bulletin ASA

Member of the Editorial Board of Zeitschrift des Bernischen Juristenvereins (since 2005)

9. Languages

Mother tongue: German

Working languages (i.e. languages in which you have both a spoken and written command so that you may conduct arbitral proceedings in this language): English, French

10. In which legal systems have you trained?

- | | | |
|-----------------------------------------------|----------------------------------------|-----------------------------------------------|
| <input checked="" type="checkbox"/> Civil Law | <input type="checkbox"/> Common Law | |
| <input type="checkbox"/> Austrian Law | <input type="checkbox"/> Hungarian Law | <input checked="" type="checkbox"/> Swiss Law |
| <input type="checkbox"/> Czech Law | <input type="checkbox"/> Polish Law | <input type="checkbox"/> Ukrainian Law |
| <input type="checkbox"/> German Law | <input type="checkbox"/> Slovakian Law | <input type="checkbox"/> European Law |

Other _____

11. What is your main jurisdiction of practice?

Switzerland

12. In which jurisdictions are you admitted to the bar?

Switzerland

13. Special expertise or specializations (please list a maximum of five):

- | | | | |
|---------------------------------------------------------------------|--------------------------------------------------|----------------------------------------------------|-------------------------------------------------|
| <input type="checkbox"/> Antitrust/Unfair competition | <input type="checkbox"/> Damages | <input type="checkbox"/> Insolvency | <input type="checkbox"/> Power plants |
| <input type="checkbox"/> Aviation | <input checked="" type="checkbox"/> Distribution | <input type="checkbox"/> Insurance | <input type="checkbox"/> Private Intern. Law |
| <input type="checkbox"/> Banking & Finance | <input type="checkbox"/> Domain name disputes | <input type="checkbox"/> Intellect. property (IP) | <input type="checkbox"/> Public Intern. Law |
| <input type="checkbox"/> Capital markets | <input type="checkbox"/> Employment | <input type="checkbox"/> ISDS/ Foreign invest. | <input type="checkbox"/> Real estate |
| <input type="checkbox"/> CISG | <input type="checkbox"/> Energy | <input checked="" type="checkbox"/> Joint ventures | <input type="checkbox"/> Shipping |
| <input type="checkbox"/> Civil fraud disputes | <input type="checkbox"/> Engineering | <input type="checkbox"/> Licensing | <input type="checkbox"/> Sports |
| <input checked="" type="checkbox"/> Commercial disp. / transactions | <input type="checkbox"/> Entertainment | <input type="checkbox"/> Life sciences | <input type="checkbox"/> State/Public contracts |
| <input type="checkbox"/> Commodity market | <input type="checkbox"/> Healthcare & Pharmac. | <input type="checkbox"/> Maritime arbitration | <input type="checkbox"/> Technology |
| <input type="checkbox"/> Company/Corporate/M&A | <input type="checkbox"/> Hotel/Gastro./Tour. | <input type="checkbox"/> Media | <input type="checkbox"/> Telecommunication |
| <input checked="" type="checkbox"/> Construction | <input type="checkbox"/> Inform. technology (IT) | <input type="checkbox"/> Mining | <input type="checkbox"/> Transport |
| <input type="checkbox"/> Contract law | <input type="checkbox"/> Infrastructure | <input type="checkbox"/> Natural resources | |
- Other ___Oil & Gas_____

14. Date of birth: 1970

VIAC offers arbitration practitioners the possibility to present themselves on its website. VIAC reserves the right to publish any presentations submitted and to remove it as the case may be. Parties are free to nominate an arbitrator of their choice and so is the VIAC Board when appointing an arbitrator. These presentations do not constitute recommendations but may assist the parties in choosing an arbitrator willing to conduct proceedings according to the Vienna Rules. The fact that an arbitration practitioner appears on this list, does not authorize this person to use the title "VIAC-arbitrator".

I have completed this questionnaire to the above to the best of my knowledge and believe they are accurate.

I hereby consent that the data provided in this questionnaire may be processed for the appointment of arbitrators and published by VIAC. This includes in particular publication on the website of VIAC as well as use in any presentations, etc. This consent may be withdrawn at any time by contacting VIAC at our general contacts, in particular by email addressed to office@viac.eu. The consequence of any such withdrawal will be that my data will no longer be processed by VIAC. For further information, see our privacy statement at <http://www.viac.eu>.

11 November 2019

Date

and

Signature