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Arbitration: New Supplemental Swiss Rules for Trust, Estate and Foundation Disputes (TEF Rules)

1. The Swiss Arbitration TEF Rules come into force on 1 July 2025. The TEF Rules are available in 4 languages (EN, DE, FR, IT) and can be accessed [here](#). The Explanatory Note accompanying the Rules in English can be accessed [here](#).
2. The TEF Rules are an attempt to provide certainty and predictability in cross-border disputes by allowing matters to be determined in one forum, potentially avoiding parallel court proceedings in multiple jurisdictions when there are common assets and interested parties.
3. There has been a notable rise in trust disputes involving estates and private wealth family offices and foundations in Switzerland. Whilst there is no legal construct for trusts in Swiss law, Switzerland will recognise foreign trusts and arrangements. For Swiss-based parties, Lichtenstein has been a popular option for the creation of trusts for investments and managing assets. Outside of Switzerland, trust structures are common and large family and private wealth offices will invariably have assets, interested parties and transactions in multiple jurisdictions including Switzerland.
4. Despite the majority of disputes under the Swiss Arbitration Rules being commercial matters, the Swiss Arbitration Court also has a history of administering disputes under the Swiss Rules between individuals concerning trusts, estates and foundations. The TEF Rules as a supplement to the Swiss Arbitration Rules aims to address the complexity of private wealth disputes and bring the disputes into one forum.
5. As noted in the Explanatory Note, Swiss Law already recognises arbitration clauses contained in unilateral legal instruments such as wills, trusts and foundation deeds where the seat of arbitration is Switzerland:

"As of 1 January 2021, the Swiss Civil Procedure Code ("CPC") and Chapter 12 of the Swiss Private International Law Act ("PILA"), which govern domestic and international arbitration

in Switzerland respectively, expressly provide that their provisions apply mutatis mutandis to arbitration clauses contained in unilateral legal instruments or articles of association (Article 178(4) of the PILA and Article 358(2) of the CPC)."

6. Not all private wealth disputes can be determined under the TEF Rules. Disputes between beneficiaries, trustees and third parties will generally not be covered by the jurisdiction of the unilateral arbitration clause as third parties are not contemplated within the construct of the clause.
7. Further, it should also be noted that disputes determined under the TEF Rules may have limits as to universal jurisdictional utility. It may not be possible to oust the jurisdiction of the supervisory courts by arbitration in some jurisdictions and this needs to be thought through at the time of inserting a unilateral clause into a deed or when invoking of the arbitration clause and jurisdiction. The Explanatory Note sets out the jurisdictional issues to note:

Accordingly, parties wishing to include Unilateral Arbitration Clauses in their legal instruments and/or arbitration clauses in their contracts are advised to consider the applicable law and the arbitration law in all of the relevant or potentially relevant jurisdictions in order to identify factors that might pose a problem at a later stage, including on enforcement, such as (i) any limitations on the arbitrability of TEF Disputes or the jurisdiction of arbitral tribunals, for instance in cases involving real estate assets; (ii) any requirements as to the form of an arbitration clause in a will; (iii) the validity and/or binding effect of a Unilateral Arbitration Clause in a will or similar deed, in particular vis-à-vis heirs benefitting from statutory entitlements; (iv) possible limitations to the free selection of the applicable substantive law; (v) whether the relevant jurisdiction is a signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"); and (vi) whether TEF Disputes qualify as commercial disputes under the New York Convention.

8. The TEF Rules are a helpful step in private wealth disputes but thought needs to be had about jurisdictional issues and whether the arbitration clause can provide a complete solution.

Benjamin is a globally experienced Counsel at Forum Chambers, with a multi-jurisdictional practice spanning the UK, Switzerland, Australia, Hong Kong, Europe and Singapore. He specializes in a wide range of areas, including commercial litigation, arbitration, insolvency, intellectual property and sports law.

Benjamin offers tailored legal solutions to clients across diverse sectors, drawing on his deep expertise in both contentious and non-contentious matters. His practice includes advising on complex cross-border issues and providing strategic counsel to businesses navigating international legal landscapes, Benjamin also has acted for a number of HNW individuals and family offices.

In addition to his litigation practice, Benjamin is a skilled mediator and alternative dispute resolution (ADR) practitioner, with substantial experience in arbitration involving multi-jurisdictional disputes.