Swiss Supreme Court annuls award that found jurisdiction based on invoices sent by WhatsApp

by *Practical Law Arbitration*, with *Schellenberg Wittmer Ltd*

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In *Decision 4A_237/2026*, slated for publication in the official court reporter, the Swiss Supreme Court set aside a domestic award, holding that the sole arbitrator lacked jurisdiction. The dispute concerned art sales agreed via WhatsApp, after which the seller sent PDF invoices via WhatsApp containing an arbitration clause in attached general terms and conditions (GTCs). The court held that messaging services can satisfy the text form requirement, but as there was no reference in the chat to the arbitration clause contained in attached GTCs, an intent to arbitrate could not be established.

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The Swiss Supreme Court has set aside a domestic award in a dispute arising from the sale of artworks agreed via WhatsApp between two Swiss-domiciled parties. The seller subsequently sent PDF invoices via WhatsApp, attaching "Key Terms" and general terms and conditions (GTCs), both containing an arbitration clause. When the buyer refused to pay, the seller commenced arbitration. The sole arbitrator affirmed her jurisdiction, treating the invoices as accepted contractual amendments to the sales agreements, and awarded damages.

The buyer challenged the award before the Swiss Supreme Court, alleging that the arbitrator lacked jurisdiction under article 393(b) of the Swiss Civil Procedure Code (CPC) governing domestic arbitration.

The Supreme Court annulled the award and held that the sole arbitrator lacked jurisdiction. It recalled that waiving state court jurisdiction severely curtails legal remedies. Such intent cannot be assumed lightly; in case of doubt, restrictive interpretation is required.

The court held that instant messaging services such as WhatsApp satisfy the text form requirement for arbitration clauses under article 358(1) of the CPC without requiring signatures, provided both parties' declarations are in text form. An arbitration clause in GTCs is validly incorporated if the contract refers specifically to the clause or globally to the GTCs. However, when interpreting the parties' intent to submit disputes to arbitration, the informal nature of messaging platforms must be considered. Because WhatsApp messages are typically read on mobile devices, a recipient cannot generally be expected to review multi-page PDFs in detail.

Here, the court found there was no valid arbitration agreement. The WhatsApp correspondence never mentioned the "Key Terms", GTCs or an arbitration clause. Under commercial practice, an invoice is a payment request rather than an instrument to establish or amend contract terms. The buyer's reactions to the invoices (such as "I will pay within the next hour") related to practical execution, not contract amendment.

This decision provides guidance on concluding arbitration agreements through modern messaging tools. While confirming that WhatsApp satisfies the text form requirement, the parties' intent to agree to arbitration must be unequivocal, which is not the case when an arbitration clause is merely referred to in an attachment to a message. Crucially, as articles 358(1) and 393(b) of the CPC mirror articles 178(1) and 190(2)(b) of the Swiss Private International Law Act, the court drew on its case law and doctrine on international arbitration, confirming that this standard applies equally to international arbitrations in Switzerland.

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Case: *Decision 4A_237/2026 (Swiss Supreme Court) (14 September 2026)* (in German language).

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