Dispute resolution clauses between the hubs

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The decision

A party drafting a dispute clause for a Swiss–Singapore digital-asset contract has four realistic options: the Zürich Handelsgericht, the SICC, SIAC arbitration seated in Singapore and Swiss Rules arbitration seated in Zürich or Geneva. The choice depends on five factors.

Where are the assets against which an award or judgment will be enforced? If in Switzerland, any of the four works. If in Singapore, any of the four works. If in a third state party to the New York Convention but without a judgment-recognition treaty with either hub, arbitration is required.

Is third-party relief likely to be needed? If the dispute may require freezing orders against exchanges or disclosure from custodians, a court clause, or an arbitration clause with an express carve-out for court interim relief, is essential. The SICC and the General Division provide the strongest third-party toolkit.

Is confidentiality decisive? Arbitration provides it. The SICC can order confidentiality in some circumstances, whereas the Zürich court cannot.

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Does one party want a published precedent? Protocol foundations defending their governance model, or exchanges defending their terms, sometimes prefer a court judgment that settles the point for all users. Arbitration cannot provide it.

Are consumers involved? If so, the clause must comply with the mandatory law of the consumer's residence, which for EU consumers prohibits binding pre-dispute arbitration and for Swiss consumers restricts choice of forum under Art. 35 CPC and Art. 114 PILA.[1] A Singapore exchange with Swiss retail customers cannot rely on its SIAC clause against them.

Model structure

My own preference for institutional contracts between the hubs is SIAC arbitration seated in Singapore with Singapore or Swiss governing law as the parties prefer. The clause should add an express submission to the emergency arbitrator procedure, an express reservation of the right to seek interim relief from any court of competent jurisdiction and the parties' consent to the SICC as the supervising court. For contracts between a Swiss foundation and its Swiss service providers, Swiss Rules arbitration seated in Zürich is the natural choice. For exchange terms of service, a court clause in favour of the General Division with a mediation step is more defensible against consumers than arbitration. Model clauses are set out in Part Q, Chapter III.

Singapore perspective

If you are a Singapore fund negotiating a token allocation with a Swiss foundation, insist on three things in the dispute clause. The right to apply to the emergency arbitrator before filing the notice of arbitration, because token events move faster than institutional procedure. The right to seek court relief in any jurisdiction, because the tokens may sit on an exchange in a third country. And a monetary alternative to delivery in the remedies clause, with the valuation date fixed, because an award for delivery of tokens the foundation has already sold is worth nothing without it. A foundation that resists these points is telling you something about how it expects to perform.

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Notes

1. Swiss Civil Procedure Code (CPC; ZPO), SR 272, Art. 35; Swiss Private International Law Act (PILA; IPRG), SR 291, Art. 114; Directive 93/13/EEC on unfair terms in consumer contracts, Annex, para. 1(q). ↩

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