



**Universität  
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# Introduction to Swiss Civil Procedure

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## Legislation on civil procedure

- Swiss Code of Civil Procedure (Zivilprozessordnung, ZPO) 2008 [entry into force: 2011]
- Swiss Debt Enforcement and Insolvency Act (Schuldbetreibungs- und Konkursgesetz, SchKG) 1889 [eif 1892] / major reform 1994 [eif 1997]
- Federal Patent Court Act (Bundespatentgerichtsgesetz, BPatGG) 2009 [eif 2010]
- [Federal Act on Federal Civil Procedure (Bundesgesetz über den Bundeszivilprozess, BZP)] 1947 [eif 1948]
- Swiss Federal Court Act (Bundesgerichtsgesetz, BGG) 2005 [eif 2007]
- Bundesgesetz über das Internationale Privatrecht (IPRG) 1987 [eif 1989]
- Cantonal legislation on court organisation and subject-matter jurisdiction (eg Court Organisation Act of the Canton of Zurich [GOG])



## Legislation on civil procedure

### Adjudication

Cantonal courts, Federal  
Patent Court: ZPO [/BPatGG]  
Federal court (appeals): BGG  
[/BZP]  
Federal court (1st instance): BZP

### Enforcement

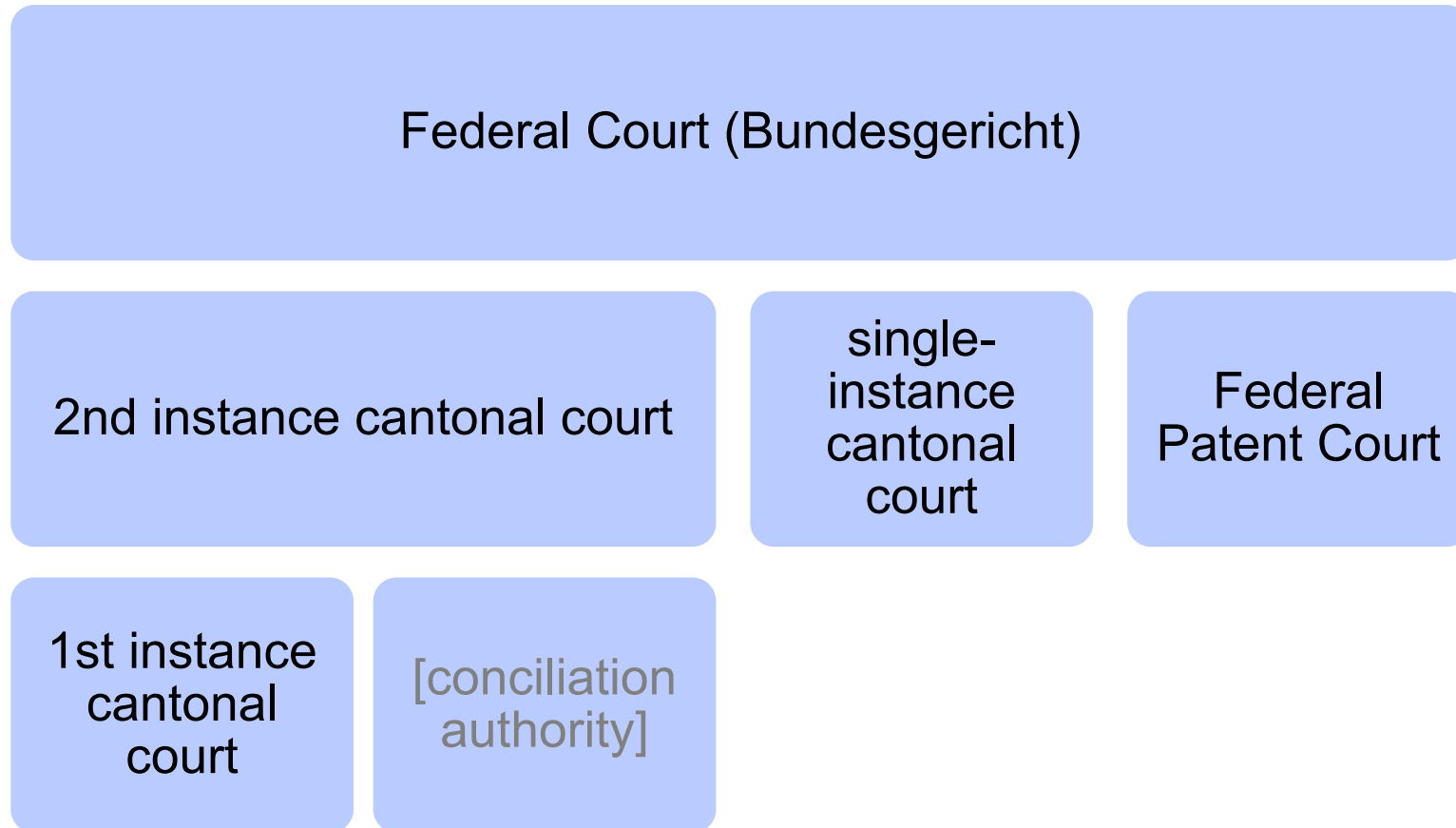
Money claims: SchKG  
Non-money-claims: ZPO

Arbitration  
Domestic: ZPO  
International: IPRG

Insolvency: SchKG



## Civil courts





## Swiss judges

- Eligibility: cantonal law (for cantonal judges)
- Professional and lay judges
- Elections
- Influence of political parties



## Swiss lawyers

- Federal Act on the Free Movement of Lawyers (Bundesgesetz über die Freizügigkeit der Anwältinnen und Anwälte, BGFA)
- Cantonal rules on bar admission
- No requirement to be represented by lawyer in civil proceedings
- Professional representation before courts: lawyers' monopoly
- Federal Court: representation only by lawyers (but litigants in person also admitted)



## Subject-matter jurisdiction

- Determined by cantonal law within parameters set by ZPO
- Example: GOG Zurich
  - District court (*Bezirksgericht*) – first instance court
    - single-judge court (*Einzelgericht*)
    - multi-judge court (*Kollegialgericht*)
    - labour court (*Arbeitsgericht*)
    - tenancy court (*Mietgericht*)
  - High court (*Obergericht*)
    - appellate court
    - first instance court
      - subject-matter jurisdiction in matters according to Articles 5-8 ZPO
        - Commercial court
        - Civil chambers as first-instance court



## Territorial jurisdiction

- Traditional Swiss approach: defendant's domicile

Article 30(2) Swiss Federal Constitution

Unless otherwise provided by law, any person against whom civil proceedings have been raised has the right to have their case decided by a court within the jurisdiction in which they reside.

- Influence of Lugano Convention





## Territorial jurisdiction

- Examples
  - Related actions (Articles 14–16 ZPO)
  - Jurisdiction agreement (Article 17 ZPO)
  - Entering an appearance (Article 18 ZPO)
  - Rights in rem (Articles 29 and 30 ZPO)
  - Place of performance (Article 31 ZPO)
  - Protection of weaker parties (consumers, tenants, employees) (Articles 32-35 ZPO)
  - Torts (Article 36 ZPO)



## Mandatory conciliation

- Principle: mandatory pre-trial conciliation
- Exceptions (examples)
  - summary procedure
  - family matters
  - single-instance cantonal court / commercial court
  - some matters connected with enforcement proceedings
- About 50% of cases settled at conciliation stage
  - & large percentage of money claims already filtered out through enforcement proceedings without prior judgment
- Cantonal rules on organisation of conciliation authority (court, justice of the peace, specialised administrative authority)
- Alternative: mediation (rarely used)



## Mandatory conciliation – possible outcomes

- dismissal for groundlessness (plaintiff's default)
- settlement, acceptance, withdrawal
  - same effect as binding judgment
- authorisation to proceed (*Klagebewilligung*)
  - case may be brought before court within 3 months (no automatic initiation of court proceedings!)
- decision (*Entscheidung*)
  - up to 2000 CHF
  - claimant's request; discretion of conciliation authority
- proposed judgment (*Urteilsvorschlag*)
  - up to 5000 CHF (gender equality/tenancy: no upper limit)



## Proceedings before the trial court

- Ordinary procedure (*ordentliches Verfahren*)
  - claims over CHF 30'000 / claims without monetary value
  - often dominated by written elements
  - emphasis on formalities, strict party responsibility, *de facto* (but not *de iure*) necessity of representation by lawyer
- Simplified procedure (*vereinfachtes Verfahren*)
  - claims up to CHF 30'000 (some types of claims regardless of value)
  - less formal, more orality, more judicial involvement
- Summary procedure (*summarisches Verfahren*)
- Special procedures in family law matters



## Proceedings before the trial court

- Structure of ordinary proceedings
  - exchange of written statements
    - (statement of claim, statement of defence)
    - if ordered by court: replication [*Replik*], rejoinder [*Duplik*]
  - at court's discretion: instruction hearing (*Instruktionsverhandlung*)
  - main hearing (waiver by parties possible)
  - only two opportunities to bring new facts and evidence without restriction



## Proceedings before the trial court

- Relationship between the judge and the parties
  - Formal aspects of proceedings (service of documents, scheduling hearings etc.): responsibility of court
  - Substantive case management?
    - principle of party presentation
    - duty to ask questions and give instructions (scope disputed; courts often reluctant, in particular towards parties represented by lawyers)
    - taking evidence ex officio



## Proceedings before the trial court

- Evidence
  - types of evidence enumerated in ZPO (witness testimony, documents, inspection, court-appointed experts, written statements, party interrogation)
  - no party-appointed experts (such expertise only qualifies as party's assertion, not as evidence)
  - free evaluation of evidence
  - “anticipated evaluation” of evidence?



## Proceedings before the trial court

- Evidence (continued)
  - duty to cooperate and right to refuse
    - unjustified refusal by party taken into account when appraising evidence
    - unjustified refusal by third party: compulsion
  - illegally obtained evidence



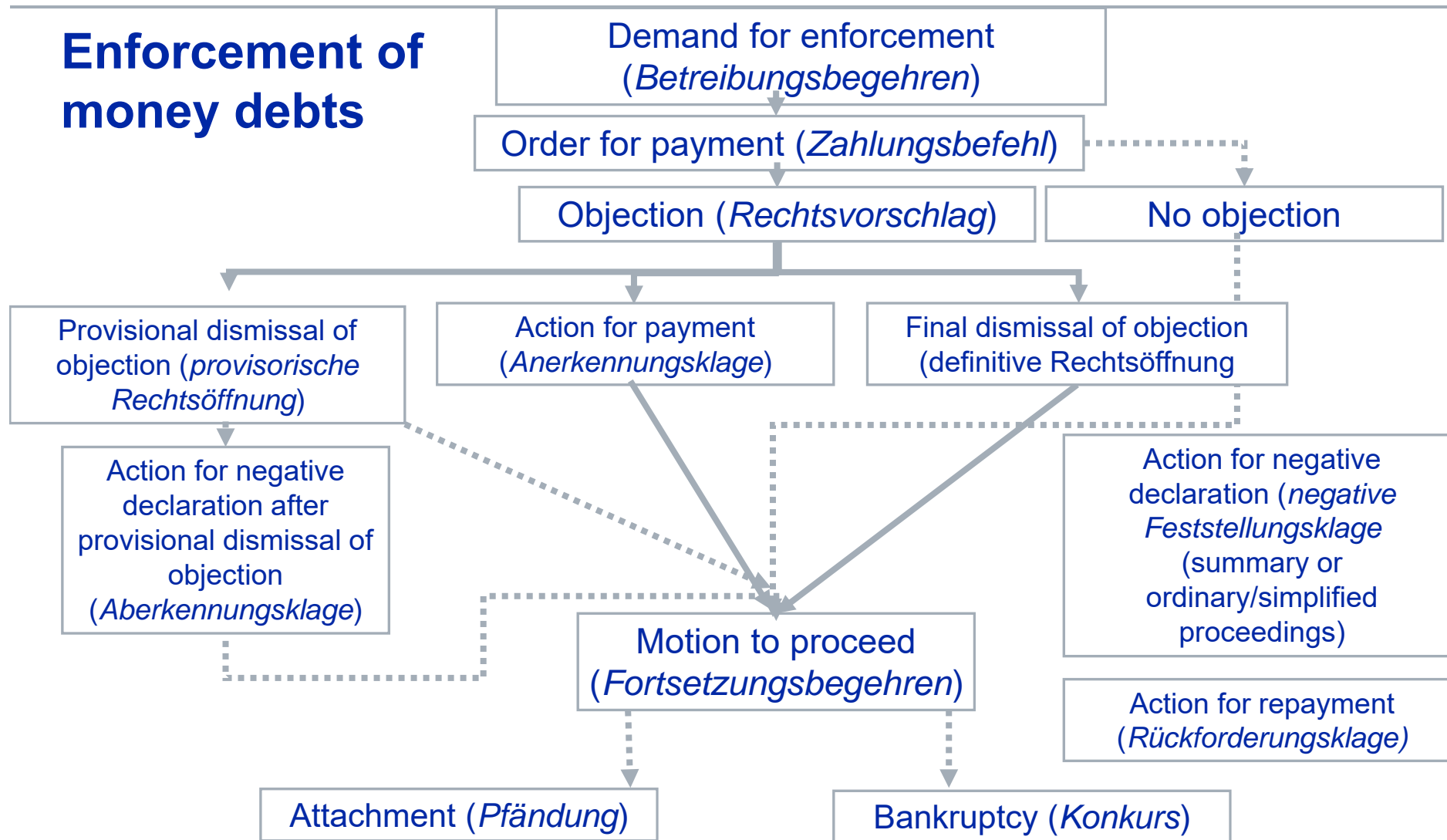


## Appeals against judgments

- Appeal (*Berufung*) and objection (*Beschwerde*) to higher cantonal court
  - depending on type of judgment and value of the dispute
  - appeal: full review
  - objection: full review on points of law; facts: only “obviously incorrect” establishment
- Civil appeal (*Beschwerde in Zivilsachen*) and subsidiary constitutional complaint (*subsidiäre Verfassungsbeschwerde*) to the Federal Court



## Enforcement of money debts





## Insolvency

- Bankruptcy proceedings as debt enforcement (for merchants/businesses; no requirement of insolvency)
- Bankruptcy proceedings without prior enforcement
  - at a creditor’s demand
  - at the debtor’s demand
- Composition proceedings (*Nachlassverfahren*)
- Distribution of assets
- After insolvency: “no new property” exception (but no discharge of residual debt)



## Arbitration

- Domestic arbitration: Articles 353 ff. ZPO (possibility to opt into IPRG regime)
- International arbitration: Articles 176 ff. IPRG (where at least one party is domiciled outside Switzerland; possibility to opt into ZPO regime)
- Swiss Rules of International Arbitration (<https://www.swissarbitration.org/>)
- Plans for reform



## Decision on jurisdiction of arbitral tribunal

- “*Kompetenz-Kompetenz*” (authority of arbitral tribunal to rule on its own jurisdiction; subject to scrutiny by Federal Court in setting-aside proceedings)
- International arbitration: priority of proceedings before arbitral tribunal; domestic arbitration: priority of proceedings brought first in time
- Only *prima facie* control of arbitration agreement by state court seised of a matter in which the parties have concluded an arbitration agreement (Article 61 ZPO, Article 7 IPRG)



## Application to set aside an arbitral award

- Application to set aside arbitral award: addressed directly to Federal Court
- Possibility to agree on cantonal court in domestic arbitration (Article 390 ZPO)
- Waiver possible if none of the parties is domiciled in Switzerland (Article 192 IPRG)



## International Litigation

- Some important international instruments
  - Lugano Convention
  - Hague Service Convention
  - Hague Evidence Convention
  - New York Convention on the Recognition and Enforcement of Arbitral Awards



## International Litigation

- National law on cross-border litigation: (primarily) IPRG
  - jurisdiction in cross-border cases
  - lis pendens in cross-border cases
  - recognition and enforcement of foreign judgments





## International Litigation

- Recognition and enforcement of foreign judgments under the IPRG (Articles 25 ff. IPRG)
  - indirect jurisdiction of the foreign court (specific rules, no “mirror principle”)
    - as a rule, no recognition or enforcement of foreign judgments given against a defendant who is domiciled in Switzerland and did not voluntarily submit to the jurisdiction of the foreign court
  - finality



## International Litigation

- Recognition and enforcement of foreign judgments under the IPRG (Articles 25 ff. IPRG)
  - grounds for refusal (Article 27 IPRG)
    - public policy exception
    - lack of proper service
    - violation of basic principles of Swiss procedural law
    - disregard of proceedings pending earlier in Switzerland or conflict with Swiss judgment or conflict with earlier third-state judgment
  - no reciprocity requirement
  - “separate” exequatur proceedings or submission of foreign judgments in “normal” enforcement proceedings



## Cross-border insolvency

- Recognition of foreign insolvency decrees (Articles 166 ff. IPRG)
  - debtor domiciled in state of origin
  - decree enforceable in state of origin
  - no ground for refusal according to Article 27 IPRG
  - reciprocity



## Cross-border insolvency

- Effects of recognition
  - secondary insolvency proceedings in Switzerland
  - if foreign scheme of distribution is recognised: proceeds handed over to main insolvency administrator after satisfying certain Swiss claimants
  - no powers of foreign administrators to act in Switzerland with respect to assets located in Switzerland
- Plans for reform
  - abolition of reciprocity requirement
  - possibility to dispense with secondary proceedings in certain cases