New Swiss Rules of Arbitration 2012 in force

International Arbitration Newsletter

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The revised and updated Swiss Rules of International Arbitration \(^1\) (Swiss Rules 2012 entered into force on 1 June 2012 and apply to all arbitral proceedings initiated after that date, unless otherwise agreed by the parties.\(^2\)

Many international arbitral institutions have recently responded to the business requirements of their users and revised their arbitral rules to:

- enhance time and cost efficiency
- take into account developments in arbitration practice and procedure and
- address the increasingly complex and diverse nature of today's disputes

The Swiss Rules 2004 already contained modern features, including the option of consolidation, joinder or mandatory expedited arbitration in certain cases, and were successful due to light administration, speedily rendered decisions and the quality of awards. The main aims of the Swiss Rules 2012 were therefore to further improve efficiency and to maintain and strengthen the successful features and flexibility of the Swiss Rules 2004.

**Background**

The Swiss Rules 2012 are based on the Swiss Rules 2004, which were in turn based on the UNCITRAL Arbitration Rules of 1976 and were drafted in order to harmonise the rules of six Swiss Chambers of Commerce and Industry (Basel, Bern, Geneva, Ticino, Vaud and Zurich, later joined by Neuchâtel). Relying on over seven years' experience and the administration of nearly 600 cases under the Swiss Rules 2004, the task force in charge completed the revision of the arbitration rules at the beginning of 2012 after 18 months of work.

**New institutions with additional powers**

The seven Swiss Chambers of Commerce established the Swiss Chambers’ Arbitration Institution (SCAI) which will provide dispute resolution services on their behalf. The SCAI itself established the Arbitration Court (the Court) - comprising 13 experienced arbitration practitioners - as the arbitration committee to administer cases as an autonomous body. This administrative change significantly strengthens the role of the Swiss Rules 2012 because the leading chambers have now united into a single structure.

The Court has been vested with additional powers aiming to ensure smooth and efficient disposal of proceedings. The Court supervises arbitral proceedings, which includes having the power to extend the term of office of the tribunal and to decide on challenges to arbitrators.\(^3\) The Court carries out a *prima facie* check on jurisdiction\(^4\), may extend or shorten a broad range of time limits\(^5\) and may constitute the arbitral tribunal in cases where the tribunal
cannot otherwise be constituted. Further, the Court is vested with a formal cost control and may approve or adjust the tribunal's determination on costs.

**Amendments increasing time and cost efficiencies**

According to the new key provision in this area, all participants are now obliged to make every effort to contribute to the efficient conduct of proceedings and to avoid unnecessary costs and delays. Any action to the contrary may have a detrimental effect on the allocation of costs.

Several other modifications have been introduced in order to accelerate the procedure. The proceedings will now be more “front loaded” - i.e., all documents and other evidence a party relies on must “as a rule” be attached to the Statement of Claim or the Statement of Defence. Party-appointed arbitrators must be nominated in the Notice of Arbitration or the Answer thereto.

Challenges against arbitrators must be made within a 15-day deadline and the Court may, in exceptional circumstances, directly appoint a replacement arbitrator or authorise the remaining arbitrators to proceed. The tribunal now has express discretion to conduct witness or expert examinations through means that do not require their physical presence at the hearing (such as videoconferencing).

Also, the tribunal may now explicitly take steps to facilitate the settlement of the dispute if the parties agree. This is a new rule which codifies existing practice, since arbitrators under the Swiss Rules 2004 tried to facilitate settlements whenever possible.

**Consolidation, joinder and expedited arbitration**

The new provision for consolidation and joinder introduces some modifications to the existing rules and was amended in order to be equally fair to all parties involved.

The Court may now decide on the consolidation of proceedings after consulting not only the parties but also any confirmed arbitrator in all proceedings. In case of consolidation, the parties to all proceedings (not just the parties to the new proceedings as before) shall be deemed to have waived their right to designate an arbitrator and the Court is now empowered to revoke the appointment and confirmation of arbitrators and to apply the provisions of composing the arbitral tribunal for the consolidated proceedings.

These modifications provide the Court with greater discretion and therefore enhance flexibility for consolidation.

A minor modification has been made to the provision on joinders, which changes the wording “third party” to “third persons”. This clarifies that it includes persons which are not yet a party to an arbitration. A joinder is now possible either if a party to a pending arbitration requests the joinder of “third persons”, either with or without a claim being raised against them, or if “third persons” request to join the proceedings of their own motion.

Since 2004, the tool of expedited proceedings was used in over 36 percent of the Swiss Rule cases - either in disputes not exceeding CHF 1 million (about US$1.1 million or €0.8 million) or due to agreement by the parties. This successful feature has been left unchanged, except for the introduction of a provisional deposit. The claimant has to provide a provisional deposit of CHF 5,000 (US$5,500 or €4,100) before the file will be forwarded to the arbitral tribunal in order to enable the tribunal to start proceedings immediately without having to wait for the receipt of advance costs.

**New urgent interim measures**

The Rules now expressly confirm that parties submitting their dispute to the Swiss Rules 2012 do not waive their right to submit a request for interim measures to state courts.

The tribunal may also now grant *ex-parte* preliminary orders in exceptional circumstances - provided the preliminary order is communicated to the other party and it is given an immediate opportunity to be heard.
A new feature

One of the major changes introduced by the Swiss Rules 2012 and a completely new feature is the possibility of emergency relief even prior to the constitution of the tribunal. Upon receipt of an application, the Court will - when appropriate - appoint and transmit the file to a sole emergency arbitrator, who will then render its decision within 15 days. The decision shall have the same effect as tribunal-ordered interim measures and may consequently either be initially granted by way of preliminary order or take the form of an interim award. This addition to the Swiss Rules 2012 brings them in line with the rules of other major arbitral institutions, which either already included this provision or have done so in recent rule amendments.

Conclusion

Although not a complete overhaul, the light revision of the Swiss Rules 2004 allows parties to save costs and time while maintaining the typical flexibility of the Swiss Rules, making the Swiss Rules 2012 even more attractive to parties seeking to resolve a dispute.

For more information about the Swiss Rules 2012, please contact Carsten Grau.

1 The Swiss Rules 2012 can be found here.
2 Art. 1.3.
3 Art. 1.4.
4 Art. 3.12.
5 Art. 2.3.
6 Art. 5.3.
7 Art. 40.4.
8 Art. 15.7.
9 Art. 40.1 and 2.
10 Art. 18.3 and 19.2.
11 Art. 3.3 (h) and 3.7 (f).
12 Art. 11.1.
13 Art. 13.2.
14 Art. 25.4.
15 Art. 15.8.
16 Art. 4.1.
17 Art. 4.2.
18 Art. 42.1 (a); Section 1.4 Appendix B (Schedule of Costs).
19 Art. 26.5.
20 Art. 26.3.
21 Art. 43.