

SWISS RULES OF INTERNATIONAL ARBITRATION

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1. HISTORY AND ORGANISATIONAL FRAMEWORK

1.1 How is the institution organised and run and what is its history?

History

The Swiss Rules of International Arbitration (Swiss Rules) came into effect on 1 January 2004 (2004 Swiss Rules). They were adopted by the Chambers of Commerce and Industry of Basel, Bern, Geneva, Ticino, Vaud and Zurich, which were joined by Neuchâtel in 2008 (Chambers of Commerce) in order to promote institutional arbitration in Switzerland and to harmonise and replace the individual rules on international arbitration of the participating Chambers of Commerce. The 2004 Swiss Rules were based on the UNCITRAL Arbitration Rules (1976), to which some changes and additions were made to adapt them to institutional arbitration and to reflect modern practice and the evolution of international arbitration since their enactment.

In 2010, a working group was set up to revise the 2004 Swiss Rules in order to make them equally compatible for use in domestic arbitration and to take account of the experience gained under the 2004 Swiss Rules and of recent developments in arbitral practice, including the revised UNCITRAL Arbitration Rules (2010). The main aims of the revision were to increase the flexibility of the proceedings for multi-party and multi-contract arbitrations, to introduce emergency interim relief for urgent cases and, in particular, to further enhance the efficiency of proceedings conducted under the Swiss Rules in terms of time and cost, while preserving a flexible administration and the autonomy of the parties and the arbitral tribunal. To that end, the Swiss Chambers' Arbitration Institution (see below) was given wider powers.

The revised Swiss Rules, which maintain the main structure and content of the 2004 Swiss Rules, came into force on 1 June 2012.

The following overview is based on the revised Swiss Rules (2012 Swiss Rules). Any reference to articles or sections in this chapter is therefore a reference to the provisions of the 2012 Swiss Rules and their appendixes.

Organisational framework

The Chambers of Commerce founded the Swiss Chambers' Arbitration Institution for the purpose of providing both domestic and international arbitration services, as well as other dispute resolution services, under any applicable law, in Switzerland or in any other country.

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Arbitrations under the 2012 Swiss Rules are administered by the Arbitration Court (Court), which is composed of experienced international arbitration practitioners. The Court is assisted in its work by the Secretariat of the Court (Secretariat). The Court replaces the previous bodies responsible for the administration and supervision of arbitral proceedings under the 2004 Swiss Rules, namely the Arbitration Committee and the Special Committee. The revised Swiss Rules grant the Court wider powers than those previously vested in the two Committees, in order to promote the efficient and smooth running of arbitral proceedings under the Swiss Rules.

By submitting a dispute to arbitration under the 2012 Swiss Rules, the parties confer on the Court, to the fullest extent permitted under the *lex arbitri*, all powers necessary for supervising the arbitral proceedings otherwise vested in the competent judicial authority (*Article 1(4)*). This rule aims to ensure the smooth running of arbitrations by providing for a fallback competence of the Court to decide any procedural issue that may arise in the course of an arbitration.

2. REGIONAL SCOPE AND STATISTICS

2.1 What regions are covered by the institution?

General scope of application of the Swiss Rules

The Swiss Rules are not part of Swiss statutory law. They apply only where the parties mutually agree to arbitrate under the Swiss Rules or under the arbitration rules of one of the participating Chambers of Commerce (*Article 1(1)*).

The 2012 Swiss Rules apply to all arbitral proceedings initiated after their entry into force. The parties may, however, agree to arbitrate under the 2004 Swiss Rules (*Article 1(3)*).

Geographical scope

Arbitration under the Swiss Rules is not limited to a geographical territory. The parties may choose a seat of arbitration in Switzerland or in any other country (*Article 1(2)*).

The Chambers of Commerce and Industry of the following Swiss cantons provide arbitration services under the Swiss Rules: Basel, Bern, Geneva, Neuchâtel, Ticino, Vaud and Zurich.

Statistics

As of the end of 2014, a total of 836 cases had been submitted to arbitration under the Swiss Rules (2004 and 2012 versions), 105 of which were filed in 2014. Of the total of 836 cases submitted, 781 cases were accepted; 55 were not accepted; 99 cases were withdrawn; 212 cases were settled; and in 339 cases awards were rendered. Of all cases, 28% dealt with the purchase and sale of goods, 13% with distribution and agency, 13% with the purchase and sale of shares, and 11% with service contracts.

Evidence of the international reach of the Swiss Rules can be found not only in the origin of the parties, but also in the nationality of the arbitrators, the language of the proceedings and the applicable law: from 2004 to 2014, 52% of all parties were from Western Europe, 23% from Switzerland, 5% from Eastern Europe and Russia, 10% from Asia/Middle East and 4% from North America. In total, 29% of all arbitrators were non-Swiss (mostly nationals of other European countries), 67% of the proceedings were held in English and in 26% of the cases the applicable law was not Swiss law. The seat of the arbitrations was most often in Switzerland (47% in Zurich and 36% in Geneva).

However, in a number of cases, the seat of the arbitration was abroad, including in cities in Asia, North America and in several European states.

From 2004 to 2014, 53% of all cases were dealt with by a sole arbitrator and 38% of all arbitrations were expedited proceedings. (See https://www.swissarbitration.org/sa/download/statistics_2014.pdf).

3. RULES

3.1 Which arbitration rules are associated with your institution? What are the main areas covered by those rules? Are there any distinguishing features, for example, with respect to expedited formation? Have your rules recently changed or are they about to change? If so, how?

See *Section 1* above.

One of the main goals of the 2012 revision of the Swiss Rules was to further enhance the efficiency of arbitration proceedings in terms of time and cost. To this end, a number of new provisions were introduced. The key provision is Article 15(7), pursuant to which all participants in the arbitral proceedings must act in good faith, and make every effort to contribute to the efficient conduct of the proceedings and to avoid unnecessary costs and delays. Any actions in violation of this obligation may have an influence on the apportionment of costs.

In addition, Article 42 provides for an expedited procedure, the main features of which are:

- Transmission of the file to the arbitral tribunal after payment of a provisional deposit of CHF 5,000.
- As a rule, only one exchange of submissions.
- A single hearing (if any) for witnesses and oral arguments.
- Issuance of the award within six months.
- Statement of the reasons upon which the award is based in summary form.

The expedited procedure applies automatically to small claims (that is, where the amount in dispute does not exceed CHF 1 million), unless the Court decides otherwise based on the circumstances. Small claims cases are usually referred to a sole arbitrator, unless the parties insist on having more than one arbitrator. Parties may opt in to the procedure in cases where the amount in dispute exceeds CHF 1 million.

The 2012 Swiss Rules expressly allow for *ex parte* interim relief, provided that the party against whom the *ex parte* measure is directed is immediately granted an opportunity to be heard (*Article 26(3)*). Furthermore, the 2012 Swiss Rules introduced an emergency relief procedure, enabling a party to a Swiss Rules arbitration agreement to submit an application for urgent interim measures to the Secretariat before the arbitral tribunal has been constituted (*Article 43*).

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4. COMPLEX ARBITRATIONS

4.1 Have your arbitration rules developed specific provisions to address common joinder and consolidation issues which arise in multi-party arbitrations? How do you add an additional party to an ongoing arbitration? How do you pursue claims arising out of multiple contracts in a single arbitration and combine two or more separate but related arbitrations?

The provisions on consolidation and joinder contained in the Swiss Rules are one of their distinguishing features. The 2012 Swiss Rules grant the Court or the arbitral tribunal, respectively, the utmost flexibility when deciding on the question of potential consolidation or joinder.

The Court, after consulting the parties and any confirmed arbitrators, may decide to consolidate a new case with arbitral proceedings already pending under the 2012 Swiss Rules. Consolidation is not only possible if the new case submitted is between the same parties and arises out of another contract, but also if the new case involves different parties to those involved in the pending proceedings. The Court, when rendering its decision, must take into account all relevant circumstances of the case, including the links between the cases and the progress already made in the pending proceedings. Although it is possible to consolidate proceedings which are based on different arbitration agreements, those arbitration agreements must all refer to the Swiss Rules and be compatible at least with regard to the number of arbitrators, the language and seat of the arbitration. Where the Court decides to consolidate cases, the parties to all proceedings are deemed to have waived their right to designate an arbitrator. The Court may revoke the appointment and confirmation of arbitrators and apply the provisions on the composition of the arbitral tribunal set out in section II of the 2012 Swiss Rules (*Article 4(1)*).

The 2012 Swiss Rules also confer jurisdiction upon the arbitral tribunal to hear a set-off defence even if the relationship out of which the defence is said to arise is not within the scope of the arbitration clause under which the proceedings are pending, or falls within the scope of another arbitration agreement or forum-selection clause (*Article 21(5)*).

A counterclaim, by contrast, is only admissible if governed by the same arbitration agreement as that under which the arbitration is pending.

Pursuant to Article 4(2), the arbitral tribunal has the power to decide on requests from third persons to participate in an ongoing arbitration and on requests by parties to the arbitral proceedings seeking to join third persons to the arbitration. The person joining the arbitration does not necessarily need to take part in the proceedings as a party, that is, as a claimant or respondent. In other words, that person need not raise or defend a claim. The Swiss Rules allow for other forms of intervention in proceedings – for example, in support of one of the parties. As with consolidation, there are no fixed pre-requisites for allowing joinder. The arbitral tribunal will consider a range of factors, including how the joinder would affect the proceedings and the rights of all involved.

5. COSTS OF THE ARBITRATION

5.1 How do you calculate fees and what are the parties' obligations in this respect? Are arbitrators' fees and the fees of the institution charged on an ad valorem or hourly basis? Do you require a provisional advance or any advance on costs? Is there provision for separate advances on costs?

The main provisions on costs can be found in Appendix B to the 2012 Swiss Rules.

Registration fee and administrative costs

A non-refundable registration fee must be paid when a notice of arbitration or a counterclaim is submitted. The registration fee ranges from CHF 4,500 to CHF 8,000, depending on the amount in dispute (*section 1.1, Appendix B: Schedule of Costs*). If the amount in dispute is not quantified, the registration fee is CHF 6,000 (*section 1.2, Appendix B*).

In addition to the registration fee, administrative costs are payable to the Swiss Chambers' Arbitration Institution where the amount in dispute exceeds CHF 2 million (*section 2.2 in conjunction with section 6, Appendix B*). The administrative costs are calculated following the same *ad valorem* principle as that applicable to the fees of the arbitrators (*described in the next paragraph*), reaching a maximum level of CHF 50,000 for an amount in dispute in excess of CHF 100 million (*section 2.3 in conjunction with section 6, Appendix B*). For more detailed information on the administrative costs, see www.swissarbitration.org/sa/en/costs.php.

Arbitrators' fees

Pursuant to Article 39(1), the arbitrators' fees and expenses must be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent and any other relevant circumstances of the case.

The arbitrators' fees are computed on the basis of the scales in section 6 of Appendix B, with a minimum and a maximum amount of fees stipulated for any given amount in dispute (*section 2.3, Appendix B; see also the electronic cost and fee calculator on www.swissarbitration.ch*). The amount in dispute is calculated by adding the value of the claims and any counterclaims. The amount of any set-off defences is also factored in, unless the arbitral tribunal is of the opinion that dealing with those defences will not require significant additional work (*section 2.4, Appendix B*). For more detailed information on the arbitrator's fees, see www.swissarbitration.org/sa/en/costs.php.

Fees in excess of the scales in section 6 of Appendix B are admissible in exceptional circumstances only and require the prior approval of the Court (*section 2.3, Appendix B*).

The amounts payable to the arbitral tribunal do not include any amount for value-added tax, or any other taxes or charges that may be applicable to the arbitrators' fees. The parties have a duty to pay any such taxes or charges, the recovery of which is a matter to be determined between each arbitrator and the parties (*section 5, Appendix B*).

Arbitrators' expenses

The members of the arbitral tribunal are entitled to recover reasonable disbursements, such as expenses for travel, accommodation, meals and any other costs related to the conduct of the arbitration (*section 3, Appendix B*).

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Deposits of costs

Once the arbitral tribunal has been constituted, it will, after consulting with the Court, request each party to deposit an equal amount as an advance for the fees and expenses of the arbitral tribunal, for the costs of expert advice and of any other assistance required by the arbitral tribunal, as well as for the administrative costs (*Article 41(1) in conjunction with Article 38(a)–(c) and (f)*).

In the event of a counterclaim, or where it otherwise appears appropriate in the circumstances, the arbitral tribunal may at its discretion establish separate deposits of costs for each party in proportion to the amount of their respective claims and counterclaims (*Article 41(2)*).

The arbitral tribunal may, after consulting with the Court, request supplementary deposits during the course of the arbitral proceedings if, based on an updated estimate, the arbitration costs are not covered by the initial deposits (*Article 41(3)*).

5.2 If money is held in advance of arbitration costs, is the interest credited to parties or the institution? What procedures are available if a party is unhappy with the proposed or actual costs? What are the consequences of one party refusing to pay any required advance on costs? Are there any provisions dealing with security for costs?

Holding the deposits of costs

The Secretariat or, if so requested by the Secretariat, the arbitral tribunal is required to hold the deposits paid by the parties in a separate bank account which is solely used for, and clearly identified as relating to, the arbitral proceedings in question (*section 4(1), Appendix B*). The interest accruing on the deposits is credited to the parties.

Challenge to decisions on costs

The arbitral tribunal determines the final costs of the arbitration (including the parties' legal fees) in its award (*Article 38*). In principle, the costs of the arbitration are to be borne by the unsuccessful party. With regard to the costs for legal representation and assistance, however, the arbitral tribunal is free to determine which party should bear such costs. In either case, the arbitral tribunal may, if it deems it reasonable having regard to the circumstances of the case, choose to apportion the costs between the parties (*Article 40(1) and (2)*).

The Court must approve the arbitral tribunal's decision on costs before the award is communicated to the parties. Any approval or adjustment of the costs by the Court is binding upon the arbitral tribunal (*Article 40(4)*).

The 2012 Swiss Rules do not provide the parties with a mechanism to challenge the arbitral tribunal's decisions on deposits or actual costs, whether it be during or at the end of the proceedings. However, the parties may have a right to challenge those decisions before state courts.

Refusal to pay deposits on costs

If the initial or supplementary deposits are not paid in full within 15 days after the receipt of the request, the arbitral tribunal notifies the parties so that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the proceedings (*Article 41(4)*).

Security for costs

The Swiss Rules do not contain any specific provisions requiring the claimant to furnish security for costs. It is, however, accepted that the arbitral tribunal may order the provision of security for costs as an interim measure pursuant to Article 26.

6. AGREEMENTS TO ARBITRATE

6.1 Does your institution recommend a standard form arbitration clause? If so, please provide details

The Chambers of Commerce recommend the following model arbitration clause:

“Any dispute, controversy, or claim arising out of or in relation to, this contract, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers’ Arbitration Institution in force on the date when the Notice of Arbitration is submitted in accordance with these Rules.

The number of arbitrators shall be ... [“one”, “three”, “one or three”];

The seat of the arbitration shall be ... [name of city in Switzerland, unless the parties agree on a city in another country];

The arbitral proceedings shall be conducted in ... [insert desired language].”

7. INITIATING PROCEEDINGS

7.1 What must a party wishing to commence an arbitration submit to the institution (that is, required documents)? What are the contents of such submission? What are the procedural requirements? Who has responsibility for serving the proceedings, the institution or the initiating party?

Notice of arbitration

A party wishing to commence an arbitration under the 2012 Swiss Rules must submit a notice of arbitration to the Secretariat at any of the addresses in Appendix A to the Swiss Rules (*Article 3(1)*), preferably at the address corresponding to the seat of arbitration mentioned in the arbitration clause.

Article 3(3) sets out the formal requirements for the notice of arbitration. The notice must include:

- A demand that the dispute be referred to arbitration.
- The names, addresses, telephone and fax numbers, and e-mail addresses (if any) of the parties and of their representative(s).
- A copy of the arbitration clause or the separate arbitration agreement that is invoked.
- A reference to the contract or other legal instrument(s) out of, or in relation to, which the dispute arises.

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- The general nature of the claim and an indication of the amount involved, if any.
- The relief or remedy sought.
- A proposal as to the number of arbitrators, the language and the seat of arbitration, if the parties have not previously agreed thereon.
- The claimant's designation of one or more arbitrators, if the parties' agreement so requires.
- Confirmation of payment of the registration fee.

The notice may also include the claimant's proposal for the appointment of a sole arbitrator, as well as a full statement of claim (*Article 3(4)*). The notice of arbitration must be submitted in as many copies as there are other parties, together with an additional copy for each arbitrator and one copy for the Secretariat. The notice must be submitted in English, French, German or Italian (even if the agreed language of the proceedings is another), failing which the Court may request the claimant to provide a translation (*Article 3(5)*).

Service requirements

The Secretariat must forward a copy of the notice of arbitration and of any related exhibits to the respondent without delay (*Article 3(6)*). The Swiss Rules do not specify any particular service method for the notice of arbitration.

Answer to the notice of arbitration

Within 30 days from receipt of the notice of arbitration, the respondent must submit to the Secretariat an answer to the notice of arbitration, which should, to the extent possible, include the elements listed in Article 3(7), that is, in particular:

- Any objection to the jurisdiction of the arbitral tribunal.
- The respondent's comments on the particulars of the claim set forth in the notice of arbitration.
- The respondent's answer to the relief or remedy sought in the notice of arbitration.
- The respondent's designation of one or more arbitrator(s), if the parties' agreement so requires.

The answer to the notice of arbitration may also include the respondent's proposal for the appointment of a sole arbitrator or the full statement of defence (*Article 3(8)*). Furthermore, the respondent should in principle raise any counterclaim or set-off defence with the answer to the notice of arbitration (*Article 3(10)*).

8. INTERIM RELIEF

8.1 Are there any provisions dealing with interim relief prior to the formation of the tribunal? Are there any provisions dealing with the appointment of an "emergency arbitrator"?

Interim relief

At the request of a party, the arbitral tribunal may order any interim measure it considers necessary or appropriate (*Article 26(1)*). The arbitral tribunal may furthermore modify, suspend or terminate the ordered measures at the

request of a party or, in exceptional circumstances and after having notified the parties, on its own initiative (*Article 26(1)*). The arbitral tribunal is empowered to order the provision of appropriate security (*Article 26(2)*).

In exceptional circumstances, the arbitral tribunal may decide on a party's request for interim measures on an *ex parte* basis, by way of a preliminary order issued before the request has been notified to any other party and without first hearing any such other party. In such cases, the other party or parties will be notified of both the request and the ensuing order at the same time, and will immediately thereafter be granted an opportunity to be heard (*Article 26(3)*).

The arbitral tribunal has considerable freedom and discretion in respect of the object as well as the nature of interim measures that may be ordered.

By submitting their dispute to arbitration under the Swiss Rules, the parties do not waive any right that they may have under the *lex arbitri* to apply for interim measures before a judicial authority, be it prior to or after the constitution of the arbitral tribunal. A request for interim measures addressed by any party to a judicial authority is not deemed to be incompatible with the arbitration agreement or to constitute a waiver of that agreement (*Article 26(5)*).

Emergency arbitrator

The 2012 Swiss Rules have introduced the possibility for the parties to obtain emergency relief: unless the parties have agreed otherwise, a (future) party to proceedings under the Swiss Rules requiring urgent interim measures may submit a request for emergency proceedings to the Secretariat before the arbitral tribunal has been constituted (*Article 43(1)*).

Article 43 of the Swiss Rules does not curtail a party's right to obtain interim measures from any competent state court prior to or after the constitution of the arbitral tribunal (*see Article 26(5)*). Rather, the emergency relief proceedings provide an additional option to obtain interim measures in urgent cases. The filing of a request for emergency relief is not deemed to constitute a waiver of the requesting party's right to apply to the competent state courts for interim relief. It will, however, be for the competent state court to determine the impact of the pending emergency relief proceedings when deciding on any application for interim relief.

The party applying for emergency relief must pay a non-refundable registration fee of CHF 4,500 and a deposit of costs of CHF 20,000 together with the application (*section 1.6, Appendix B to the 2012 Swiss Rules*).

The Court shall appoint a sole emergency arbitrator unless there is manifestly no arbitration agreement referring to the Swiss Rules or unless it appears more appropriate to proceed with the constitution of the arbitral tribunal and have it decide on the request (*Article 43(2)*). The emergency arbitrator is free to conduct the proceedings in such way as he or she deems appropriate. The emergency arbitrator must, however, ensure that each party has a reasonable opportunity to be heard on the request for emergency relief (*Article 43(6)*). The emergency arbitrator must render his or her decision within 15 days from the transmission of the file by the Secretariat (*Article 43(7)*). Decisions of an emergency arbitrator have the same effect as interim measures ordered by an arbitral tribunal pursuant to Article 26 (*Article 43(8)*). Any measure ordered by the emergency arbitrator may be modified, suspended or terminated by the emergency arbitrator or, after transmission of the file, by the arbitral tribunal (*Article 43(8)*). Any measure granted by the emergency arbitrator ceases to be binding on the parties upon the termination of the emergency

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relief proceedings, upon the termination of the arbitral proceedings or upon issuance of the final award, unless the arbitral tribunal expressly decides otherwise in the final award (*Article 43(10)*).

If the application for emergency relief proceedings is submitted before the notice of arbitration has been filed, the applicant must file the notice within a further 10 days, failing which the Court will terminate the emergency relief proceedings (*Article 43(3)*). In that case, any measures granted by the emergency arbitrator will cease to be binding on the parties (*Article 43(10)*).

The fees of the emergency arbitrator generally range from CHF 2,000 to CHF 20,000, though they may exceed this range in exceptional circumstances and with the approval of the Court (*section 2.9, Appendix B*).

The emergency arbitrator is precluded from serving as arbitrator in any arbitration relating to the dispute in respect of which he or she has acted, unless the parties agree otherwise (*Article 43(11)*).

9. SELECTION/APPOINTMENT/CHALLENGE OF ARBITRATORS

9.1 How are arbitrators appointed? Are there any requirements as to the number of arbitrators? How are their independence and availability ensured? What is the procedure with respect to sole arbitrators, co-arbitrators and the selection of the chairman?

Number of arbitrators

The parties are free to agree on the number of arbitrators (sole arbitrator or three-member arbitral tribunal). If the parties have agreed on more than one arbitrator and if such number appears inappropriate in view of the amount in dispute or other circumstances, the Court invites the parties to agree to refer the dispute to a sole arbitrator (*Article 6(3)*). In the absence of an agreement by the parties, the Court determines the number of arbitrators, taking into account all relevant circumstances (*Article 6(1)*). As a rule, the Court refers the case to a sole arbitrator, unless the complexity of the subject matter and/or the amount in dispute justify a three-member tribunal (*Article 6(2)*). Where the amount in dispute does not exceed CHF 1 million, the case will be dealt with by way of an “expedited procedure” pursuant to Article 42, which is normally conducted by a sole arbitrator, unless the arbitration agreement provides for more than one arbitrator (*Article 6(4) in conjunction with Article 42(2); see Section 3 above*).

Appointment of arbitrators

All designations of an arbitrator by the parties or co-arbitrators are subject to confirmation by the Court (*Article 5(1)*). Where a designation cannot be confirmed, the Court will usually invite the party or parties concerned, or, as the case may be, the arbitrators to designate a new arbitrator. Only in exceptional circumstances will the Court proceed directly with the appointment (*Article 5(2)*).

Where a dispute is referred to a sole arbitrator, the parties must jointly designate the sole arbitrator, failing which the Court will proceed with the appointment (*Article 7*). Where the resolution of a dispute is submitted to a three-member arbitral tribunal, each party designates one arbitrator, unless the parties have agreed otherwise (*Article 8(1)*). The designation must be made, respectively, in the notice of arbitration or the answer thereto (*Article 3(3)(h) and (7)(f)*). Within 30 days from the confirmation of the second arbitrator, the two appointed arbitrators must

designate the presiding arbitrator. If a party fails to designate an arbitrator or if the two appointed arbitrators fail to designate the presiding arbitrator, the Court will make the necessary appointment (*Article 8(2)*).

The Court is empowered to address any failure in the constitution of the arbitral tribunal. It may, in particular, revoke any appointment already made and appoint or reappoint any of the arbitrators and designate one of them as presiding arbitrator (*Article 5(3)*).

In multi-party proceedings, the arbitral tribunal is constituted in accordance with the parties' agreement (*Article 8(3)*). Failing a designation of an arbitrator by a party or group of parties, the Court may appoint all arbitrators and will specify the presiding arbitrator (*Article 8(5)*).

9.2 What are the procedures for mounting challenges, including when and how the parties may submit objections and how arbitrators' appointments can be challenged after the event? How can arbitrators be replaced once removed/unable to continue with the appointment?

Independence and challenge to arbitrators

Arbitrators are required to be and remain at all times impartial and independent of the parties. Circumstances likely to give rise to justifiable doubts as to an arbitrator's impartiality or independence must be disclosed prior to his or her appointment and throughout the proceedings (*Article 9*). Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his or her impartiality and independence (*Article 10*).

If a party learns of such circumstances before the arbitrator in question has been confirmed by the Court, it may request that the Court refuse confirmation. At any point after the appointment has been confirmed, a party wishing to challenge an arbitrator must send a notice of challenge to the Court within 15 days after learning of the ground for the challenge. The other parties and the challenged arbitrator are entitled to comment on the challenge. The Court decides on the challenge if, within 15 days from the date of the notice of challenge, all parties have not agreed to the challenge or the challenged arbitrator has not withdrawn. The Court's decision does not need to be reasoned and is final (*Article 11*). The parties may, however, subsequently seek to have the award itself set aside for lack of independence or impartiality of an arbitrator, pursuant to Article 190(2)(a) of the Swiss Federal Act on Private International Law.

Replacement of arbitrators

If an arbitrator has to be replaced, the parties are invited by the Court to follow the ordinary procedure for appointment (*Article 13(1) in conjunction with Articles 7 and 8*). Only in exceptional circumstances may the Court directly appoint the replacement arbitrator or, if an arbitrator was removed after the closure of the proceedings, decide not to replace him or her and authorise the remaining arbitrator(s) to proceed with the arbitration and make any decision or award as a "truncated tribunal" (*Article 13(2)*).

If there has been a replacement, the proceedings are, as a rule, resumed at the stage that they had reached at the time when the replaced arbitrator ceased to perform his or her duties (*Article 14*).

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10. RESOLUTION OF JURISDICTIONAL ISSUES

10.1 Does the institution play a role in determining jurisdiction disputes? How does the role of the institution interplay with the role of the tribunal and the national courts in this regard?

Under the 2012 Swiss Rules, the Secretariat must forward a copy of the notice of arbitration and of any exhibits included therewith to the respondent without examining whether there is a valid arbitration agreement (*Article 3(6)*). If the respondent does not submit an answer to the notice of arbitration, or raises an objection to the arbitration being administered under the Swiss Rules, the Court will carry out a *prima facie* review of the arbitration agreement. Unless it reaches the conclusion that there is “manifestly” no agreement to arbitrate under the Swiss Rules, the Court will administer the case (*Article 3(12)*).

A plea that the arbitral tribunal lacks jurisdiction should be raised in the answer to the notice of arbitration, and in no event later than in the statement of defence or, with respect to a counterclaim, in the reply to the counterclaim (*Article 21(3)*).

It is for the arbitral tribunal to rule on objections to its jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of any separate arbitration agreement (*Article 21(1)*). The arbitral tribunal also has the power to determine the existence or the validity of the contract of which an arbitration clause forms a part (*Article 21(2)*). As a general rule, the arbitral tribunal should decide on any objection to its jurisdiction as a preliminary question, but it may also choose to proceed with the arbitration and rule on the objection in an award on the merits (*Article 21(4)*).

Whether or not a decision of the arbitral tribunal as to its jurisdiction may be challenged before the national courts is determined by the *lex arbitri* and not by the 2012 Swiss Rules.

11. TYPICAL AND/OR REQUIRED PROCEDURES

11.1 In brief, what are the key documents which must be filed by the parties (for example, request for arbitration, defence, reply) and the timescales for filing them?

After submission of the notice of arbitration and the answer to the notice of arbitration (*see Section 7 above*), the parties will, respectively, submit a statement of claim and a statement of defence (to the extent that this was not done with the notice and answer) within a period of time to be determined by the arbitral tribunal (*Articles 18 and 19*). As a rule, the parties annex to the statement of claim and statement of defence all documents and other evidence on which they rely (*Articles 18(3) and 19(2)*). Thereafter, the arbitral tribunal decides which further written statements must be submitted by the parties (*Article 22*). Typically, there will be a second round of written submissions (that is, reply and rejoinder). The parties may also, prior to the hearing, present expert and witness evidence in the form of written statements or reports (*Article 25(3)*).

11.2 How is the procedural timetable established? What written submissions/memorials are typically required? What are the general rules with respect to document production and hearings, and the typical length of the proceedings?

Procedural timetable and time limits for written statements

The arbitral tribunal prepares a provisional timetable at an early stage of the proceedings, in consultation with the parties (*Article 15(3)*). The timetable will, as a rule, cover the main stages of the proceedings, establishing a time-frame for the submission of written statements and of witness and expert evidence, and a date for the hearing (if any). It may be updated as the proceedings progress.

According to *Article 23*, the time limits for written statements should not normally exceed 45 days, but the arbitral tribunal may extend this time limit if it considers that an extension is justified. In practice, time limits will be set taking into account the complexity of the case and any further relevant circumstances.

Failure by the claimant to comply with the time limit for submission of the statement of claim without good cause for such failure will result in the termination of the proceedings (*Article 28(1)*). By contrast, if the respondent fails to submit its statement of defence within the prescribed time limit, the proceedings will nevertheless continue (*Article 28(1)*).

Documentary evidence

Unlike some other institutional rules, the Swiss Rules do not provide for a mandatory document production or disclosure procedure. It is left to the tribunal to decide, either of its own motion or at the request of a party, whether the production of further evidence is necessary and, if so, what the scope of production should be.

Hearings

A hearing is not an indispensable element of an arbitration under the Swiss Rules. If a hearing is held, the arbitral tribunal must give the parties notice of the date, time and place thereof sufficiently in advance (*Article 25(1)*). At the hearing, the witnesses and expert witnesses will be heard and examined in the manner determined by the arbitral tribunal. It is common practice for witnesses and experts to be questioned and cross-examined by the parties' counsel. This may also be done through means that do not require their physical presence, for example, by videoconference (*Article 25(4)*). Unless the parties agree otherwise, hearings are held *in camera* (*Article 25(6)*).

Duration of procedure

The average duration of ordinary arbitration proceedings under the Swiss Rules is approximately 10–12 months from the moment that the file is transmitted to the arbitral tribunal. The average duration of arbitration proceedings conducted by way of an expedited procedure is approximately six months.

12. AWARDS

12.1 Are there any time limits for the rendering of awards? What is the scope of awards available (for example, interim, partial, final)? Is there a process for scrutiny of the tribunal's award by the institution and its internal bodies?

Types of awards

The arbitral tribunal may render interim, interlocutory, partial or final awards (*Article 32(1)*). If, before the award is notified to the parties, the parties reach a settlement of the dispute, the arbitral tribunal may either issue an order for the termination of the arbitration proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an award on agreed terms (*Article 34(1)*).

If the arbitral tribunal is composed of more than one arbitrator, any award or other decision is made by a majority. If no majority can be reached, the award is rendered by the presiding arbitrator alone (*Article 31(1)*). If authorised by the arbitral tribunal, the presiding arbitrator may decide questions of procedure alone, subject to revision by the arbitral tribunal (*Article 31(2)*).

There are no time limits for the rendering of awards in ordinary arbitration proceedings conducted under the 2012 Swiss Rules. In expedited proceedings, the arbitral tribunal must render the award within six months of receiving the file (*Article 42(1)(d)*).

Form and effect of award

The award is made in writing and the arbitral tribunal must state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given (*Article 32(2) and (3)*). The award must be signed by the arbitrators, be dated and indicate the seat of arbitration (*Article 32(4)*). The award is final and binding upon the parties (*Article 32(2)*), and they are obliged to comply with the award without delay (*Article 15(7)*).

Prior approval/scrutiny

There is no provision for the scrutiny of awards by the Court. According to *Article 40(4)*, the arbitral tribunal need only submit its draft award to the Secretariat for approval or adjustment of its determination on costs by the Court. However, in practice, *Article 40(4)* also enables the Court to draw the attention of the arbitral tribunal to any obvious issues with other aspects of the arbitral award.

Interpretation and correction of the award

A party may, within 30 days of receiving the award, request that the arbitral tribunal interpret the award or correct any errors in computation, clerical or typographical errors, or any errors of similar nature (*Articles 35 and 36*).

13. CONFIDENTIALITY

13.1 **What are the rules as to confidentiality of the work of the institution, the materials generated during the proceedings, the documents and evidence produced and the award rendered by the tribunal? What are the duties of confidentiality of the parties, the institution members and staff and the arbitrators?**

Unless the parties expressly agree in writing to the contrary, they are under a duty to keep confidential all awards and orders, as well as all materials filed by another party in the arbitration which are not already in the public domain. An exception applies to the extent that a disclosure is required of a party pursuant to a legal duty, to protect or pursue a legal right or to enforce or challenge an award in legal proceedings before a judicial authority. The same duty of confidentiality applies to the arbitrators, the tribunal-appointed experts, the secretary of the arbitral tribunal, the members of the board of directors of the Swiss Chambers' Arbitration Institution, the members of the Court and the Secretariat, and the staff of the individual Chambers of Commerce (*Article 44(1)*). Moreover, the 2012 Swiss Rules provide for the confidentiality of the deliberations of the arbitral tribunal (*Article 44(2)*). The award or an order may be published if a request for publication is addressed to the Secretariat and no party objects to such publication, provided all references to the parties' names are deleted (*Article 44(3)*).

14. INSTITUTIONAL ADVANTAGES

14.1 **What are the main advantages and strengths of the institution? Are there any other unique institutional features which make arbitrating under its auspices more attractive relative to other similar service providers?**

The Swiss Chambers' Arbitration Institution has a strong reputation for managing arbitration proceedings in a professional and efficient manner. Arbitration under the Swiss Rules is in general fast, in particular due to lighter administration compared to other institutional arbitration rules. Even though the 2012 revision of the Swiss Rules has strengthened the role of the Swiss Chambers' Arbitration Institution by granting the Court additional powers, the 2012 Swiss Rules still provide for a leaner administration of the arbitral proceedings than other institutional arbitration rules, giving the parties and the arbitral tribunal the necessary flexibility to tailor the arbitral proceedings to their needs.

The availability of an expedited procedure renders arbitration under the 2012 Swiss Rules attractive also for smaller amounts in dispute (in particular up to CHF 5 million), as the unique features of the expedited procedure enable the parties to conduct such arbitrations at very reasonable costs.

The possibilities for consolidation and participation/joiner of third persons (*see Section 4 above*) allow the parties to handle multi-party and multi-contract arbitration cases in an efficient and more flexible manner than under other institutional arbitration rules. Even though the corresponding provisions gave rise to some criticism and suspicion when they were first introduced with the 2004 Swiss Rules, parties have made frequent use of these provisions since and no major problems have been noted by the Chambers of Commerce.

SWISS RULES

15. OTHER DISPUTE RESOLUTION SERVICES

15.1 Are there any other mediation, expert determination or alternative dispute resolution services offered by your organisation?

The Chambers of Commerce also offer services in commercial mediation based on the Swiss Rules of Commercial Mediation, which came into force on 1 April 2007 (*available at www.swissarbitration.org/sm/download/swiss_mediation_rules_version_2007_english.pdf*). The Swiss Rules of Commercial Mediation contain several provisions that allow parties to easily combine mediation and arbitration and to pass from one to the other in the course of the proceedings (*see in particular Articles 23 and 24*).