

Latest time for raising of a counterclaim

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In a Swiss Chambers for Arbitration and Mediation case decided in May last year and reported in ASA Bulletin, vol. 26, no. 4, p. 731, the Arbitral Tribunal admitted a counterclaim submitted with the rejoinder based on Article 20 Swiss Rules. The Swiss Rules do not contain a provision as we find in Article 19 (3) of the UNCITRAL Rules. Respondent argued that it had not been possible to calculate the exact amount of the counterclaim at an earlier stage and that in its defence it had already submitted several claims for set-off which were identical with those of the counterclaim. The Arbitral Tribunal ruled that the late admission of the counterclaim does not result in a disadvantage for claimant and causes but a negligible delay of the proceedings. The late admission can have cost consequences (Article 20 (2) Swiss Rules).

With the admission of a counterclaim at a late stage in the proceedings, the arbitral tribunal will in most cases have to give the claimant the possibility to reply and will also have to decide whether further submissions are necessary. This may cause a substantial delay. In deciding about the admission of a counterclaim the tribunal must thus also form an opinion on whether the respondent bears the sole responsibility for the delay or whether the claimant's behaviour is part of the cause. Where it is neither party's fault, the relevant circumstances will have to be taken into account.

We would be interested to hear from readers whether they have made negative experiences with the late admission of counterclaims and what criteria should in their view be decisive for the admission.

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