

The Swiss Rules of International Arbitration - Five Years of Experience

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The Swiss Rules of International Arbitration (the “Swiss Rules”) entered into force on 1 January 2004. These rules were originally adopted by the Chambers of Commerce and Industry of Basel, Bern, Geneva, Ticino, Vaud and Zurich, and, most recently, Neuchâtel (the “Chambers”). In the past, these Chambers each had their own, different set of arbitration rules for international matters. Institutional arbitration in Switzerland was therefore sometimes perceived as fragmented, especially by foreign users. This led the Chambers to unify their rules and provide for harmonized administration of arbitration.

Since their entry into force five years ago, the Swiss Rules have been well received, both in Switzerland and abroad. This is evidenced by the growing number of arbitrations administered by the Chambers. Over the past five years, the number of Swiss Rules arbitration has continuously increased, reaching a total of 339 cases by June 2009. The increase was particularly significant in the first five months of 2009, during which the number of cases filed was almost as high as the number of cases filed during the whole of 2008.

The fact that the Swiss Rules have been well received internationally is also confirmed by the statistics published by the Chambers, which show that

approximately 80% of the parties involved in Swiss Rules arbitrations come from jurisdictions other than Switzerland.

The success of the Swiss Rules is further evidenced by the impact they have had on other arbitration rules in the past years. For instance, the Administered Arbitration Rules of the Hong Kong International Arbitration Center, which were enacted in September 2008, have heavily drawn from the Swiss Rules. In particular, Section V of the Swiss Rules providing for an expedited procedure has found its way into the Hong Kong Rules as an almost verbatim clone.

A number of factors contributed to the success of the Swiss Rules, including the following:

- Switzerland's well-established reputation as neutral venue for the resolution of international disputes.
- The existing experience and reputation of the Chambers, notably that of the Zurich and Geneva Chambers, which were already successful and well regarded before the enactment of the Swiss Rules.
- The fact that the Swiss Rules are based on the well-known UNCITRAL Arbitration Rules and that they were adapted to institutional arbitration and modified to reflect modern practice of international arbitration. For instance, the Swiss Rules contain provisions on multiparty arbitration (Article 8), on the joinder of proceedings and the participation of third parties (Article 4), on jurisdiction for set-off defences (Article 21 (5)), and on confidentiality (Article 43). The Swiss Rules also provide for an expedited procedure, which applies where the parties have agreed to it, or where the amount in dispute does not exceed CHF 1 million (Article 42).
- The "light" administration under the Swiss Rules. The Swiss Rules do not provide for a scrutiny of the award (except with respect to the arbitrators' decision on costs); there is no provision in the Swiss Rules obliging the arbitrators or the parties to copy the Chambers on all communications; there is no requirement in the Swiss Rules that the arbitral tribunal draw up terms of reference and no requirement to submit draft terms of reference to the Chambers for approval; apart from drawing up a time table, the Swiss Rules do not contain a time limit for the rendering of the award, except in proceedings conducted under the expedited procedure, in which the award must be rendered within six months from the transmission of the file to the arbitral tribunal (Article 42(1)(d)), with an extension possible "in exceptional circumstances". Judging from available statistics, which show that the average length of proceedings under the expedited procedure is

approximately eight months, it appears that extension, when granted, are very short. The statistics also show that ordinary procedures terminated within an average period of 320 days, i.e. approximately 10 months.

In conclusion, the Swiss Rules have proven very successful over the past five years. While there certainly is room for improvement on certain issues, they have a bright future ahead of them.

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