

Kluwer Arbitration Blog

Entry into force of the revised Swiss Rules of International Arbitration – 1 June 2012

Aileen Truttmann (Schellenberg Wittmer) · Friday, June 1st, 2012 · Schellenberg Wittmer

The revised Swiss Rules of International Arbitration (“Swiss Rules”) enter into force today, 1 June 2012. While some general background has been given elsewhere (see [here](#)), the following specific features of the revised Swiss Rules can be underlined.

Under the revised Swiss Rules, the administration of the arbitrations by the Court remains light as it was the case in the past:

- There is no scrutiny of the award.
- There is no obligation to draw up Terms of Reference or to hold a case management meeting, unless appropriate in terms of efficiency.
- There is no fixed time limit to render the award (except in arbitrations administered under the expedited procedure).
- The Court’s prima facie control of jurisdiction has been limited to cases where either the respondent raises jurisdictional objections or does not submit an Answer (Art. 3.12).

Additional powers have been granted to the Court for enhanced efficiency of the arbitral proceedings:

- The Court now has, to the fullest extent possible permitted under the law applicable to the arbitration, all powers required for supervising the arbitration proceedings otherwise vested in the competent judicial authority. This includes the power to extend the term of office of the arbitral tribunal and to decide on the challenge of an arbitrator on grounds not provided for in the Swiss Rules (Art. 1.4).
- The Court may extend or *shorten* time limits (Art. 2.3).
- The Court has all powers to address a failure in the constitution of the arbitral tribunal. The Court may revoke any appointment made, appoint or reappoint any of

the arbitrators and designate one of them as presiding arbitrator (Art. 5.3).

- The court must approve the arbitrators' determination on costs in the award (Art. 40.4).

Whilst preserving the flexibility of the Swiss Rules, the revision has included further amendments to increase cost and time efficiency of the proceedings:

- All participants are now under a duty to act in good faith and to make every effort to contribute to the efficient conduct of the proceedings and to avoid unnecessary costs and delays (Art. 15.7).
- The parties must already designate their arbitrator in the Notice of Arbitration/Answer to the Notice of Arbitration (Art. 3.3(h); Art. 3.7(f)).
- As a rule, the parties must already file all the evidence they rely on with the Statement of Claim/Defence (Art. 18.3 and 19.2).
- Challenges to arbitrators must be made within 15 days after the circumstances giving rise to the challenge become known to the challenging party (Art. 11.1).
- The arbitral tribunal may, with the agreement of all parties, take steps to facilitate the settlement of the dispute (Art. 15.8).
- The deadline for making cost deposits is reduced to 15 days (Art. 41.4).

As was already the case under the former version of the Swiss Rules, the arbitral tribunal has the power to grant **interim measures** (Art. 26). The Swiss Rules now expressly provide for the power of the arbitral tribunal to grant *ex parte* measures by way of a preliminary order in exceptional circumstances (Art. 26.3).

In line with recent international developments, the revised Swiss Rules have introduced **emergency relief proceedings** (Art. 43). By and large, the provisions governing these proceedings are comparable to emergency arbitrator provisions under other sets of institutional rules. An important exception is that the emergency arbitrator under the Swiss Rules also has the power to make (*ex parte*) preliminary orders in exceptional circumstances.

The distinctive flexibility provided for by the Swiss Rules in terms of **consolidation** (in the sense that identity and an express agreement of the parties are not required) and **joinder** (in the sense that both joinder *stricto sensu* and intervention are allowed) has been maintained (Art. 4). The only change concerning consolidation is the waiver of *all* the parties to designate an arbitrator and the power of the Court to revoke the appointment and confirmation of arbitrators and to appoint new arbitrators. As for joinder, the Swiss Rules now refer to "third persons" rather than "third parties" (no relief needs to be necessarily sought against/by the joined party).

With provisions geared towards enhanced efficiency and preserved flexibility of the proceedings, the revised Swiss Rules represent a valuable dispute resolution method and should further meet the

satisfaction of modern arbitration users.

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