

Newsletter No.

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Exciting News on the Swiss Arbitration Landscape – The New Swiss Rules Are Out:

In September 2020, The Swiss Chambers' Arbitration Institution ("SCAI") had already announced a new cooperation with the Swiss Arbitration Association as of January 2021. On 19 May 2021, SCAI has confirmed its transformation into the new Swiss Arbitration Centre at the end of May 2021, and has released the revised Swiss Rules, that will enter into force on 1 June 2021. Read on for an overview of the most important changes!

A Breath of Fresh Air for Swiss Arbitration: New Centre and Revised Rules



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On 19 May 2021, the Swiss Chambers' Arbitration Institution ("SCAI") has announced its transition into the new Swiss Arbitration Centre, as well as the entering into force of the revised Swiss Rules on 1 June 2021. While maintaining their successful features and continuing to ensure great party autonomy and flexibility, the new Swiss Rules 2021 promote even more efficiency and are in line with current technological trends.

The Cooperation Between SCAI and ASA

On 18 September 2020, SCAI and the Swiss Arbitration Association ("ASA") have announced that they were joining forces to administer cases brought under the Swiss Rules of International Arbitration (the "Swiss Rules") and the Swiss Rules of Mediation, and that the new cooperation would take effect as of January 2021. The cooperation would entail the transformation of SCAI into a joint-stock company, of which ASA would become the majority shareholder. The announced cooperation has been well received in the arbitration community in Switzerland and around the world. Indeed, SCAI and ASA have long been complementary forces on the Swiss and international arbitration market, however contributing to a certain fragmentation of the image of Swiss arbitration. A joined organization speaking with a single voice is a welcomed improvement for users worldwide and offers interesting perspectives. It is therefore no wonder that the announced cooperation has recently made it to the GAR Awards 2021 nomination list for "Best innovation".

The New Swiss Arbitration Centre

SCAI is an association under Swiss law based in Basel and founded by the Chambers of Commerce and Industry of Basel, Bern, Geneva, Ticino, Vaud, Zurich, Neuchâtel and Central Switzerland (the "Chambers of Commerce") in order to administer arbitrations under the Swiss Rules. In its press release dated 19 May

2021, SCAI announced that following its cooperation with ASA, it would be converted into a Swiss limited company named Swiss Arbitration Centre Ltd (the "Swiss Arbitration Centre") at the end of May 2021. SCAI's website has been updated accordingly with a new visual and integration of the ASA website. While the Chambers of Commerce remain minority shareholders, ASA "takes the lead" as majority shareholder. The Board of Directors of the Swiss Arbitration Centre is composed of four members nominated by ASA as well as three members nominated by the Chambers of Commerce. It goes without saying that arbitration agreements referring to SCAI or to the Chambers of Commerce remain valid and binding despite the conversion of SCAI into the Swiss Arbitration Centre and will be recognised and applied by the Swiss Arbitration Centre, as expressly mentioned at Introduction (c) and Article 1(1) of the Swiss Rules 2021.

Swiss Rules 2021 – The Amendments in a Nutshell

The transition into the new Swiss Arbitration Centre was used as an opportunity to undertake a general revision of the Swiss Rules, which were last revised in 2012. The Swiss Rules 2021 will be in force as from 1 June 2021 and will apply to cases in which the notice of arbitration is submitted on or after that date, unless the parties have agreed otherwise (Article 1(2)). Without drastically modifying

the former provisions, the new Swiss Rules introduce some interesting amendments “with the continued purpose of providing an efficient and reliable framework for arbitration proceedings to users around the world” (Introduction (b)).

The Swiss Rules move with the technological times. The Swiss Rules 2021 contain new provisions facilitating the online management of arbitration proceedings. Article 3(1) provides that paperless filings are the new standard, while hard copies are only required under special circumstances. Article 25(4) of the Swiss Rules 2012 already referred to videoconferences in the context of witness examination. Of course, the topic has become very relevant since the beginning of the Covid-19 pandemic. Article 27(2) of the Swiss Rules 2021 now expressly clarifies that any hearing may be held “remotely by videoconference or other appropriate means”. The wording of other provisions was slightly amended to be in line with this trend. Notably, the new Article 19(2) provides that the parties and the arbitral tribunal shall discuss issues related to cybersecurity at an early stage of the proceedings.

Special provisions for special situations. With similar efficiency aims, the Swiss Rules 2021 introduce innovative provisions for multi-contract and multi-party arbitrations and update the provisions on expedited procedure.

A first notable change concerns the introduction of express rules for claims made under more than one arbitration agreement. Consistent with the resolution of other jurisdictional issues, claims made under more than one arbitration agreement are subject to a prima facie control by the Arbitration Court (the “Court”) of the Swiss Arbitration Centre (Article 5(1)(b)) and, in case of objections that such claims should not be determined together, to the arbitral tribunal’s review (Article 23(1)).

Another important change concerns the regulation of cross-claims and requests for intervention. The previous Article 4,

which only regulated consolidation and joinder, has been replaced by two new provisions. According to Article 6, a party asserting a cross-claim against another party or a claim against an additional party (joinder), or an additional party asserting a claim against an existing party (intervention), shall do so by submitting a notice of claim. The related process is regulated under Article 6 and Articles 3 and 5 (which apply mutatis mutandis). The consolidation of proceedings is now regulated under Article 7 with some changes from the previous rules. Notably, the new Article 7(1) provides that a request of a party is necessary for the Court to consolidate proceedings.

Finally, the rules regarding the expedited procedure have been refined to bolster the efficiency and flexibility of the proceedings. For instance, the new Article 42(2)(f) should grant more freedom to the arbitral tribunal in deciding the form in which the award states the reasons upon which is based. Also, the new Article 42(3) expressly allows the parties to decide at any time during the proceedings that the rules of the expedited procedure do not apply anymore to their arbitration.

New institution, same organization.

The general reorganization of SCAI does not affect the coordination of the proceedings among the Court, the arbitral tribunal and the parties. Nonetheless, the Swiss Rules 2021 contain some valuable clarifications about the tasks and powers of the arbitral tribunal and the Court in line with the purposes of the revision. Slight amendments regarding the number, independence, challenge and removal of arbitrators (Articles 9(2), 12, 13, 14) ensure that the procedure for the constitution of the arbitral tribunal is conducted efficiently. The new Article 19 ensures procedural efficiency and party autonomy by providing flexible rules on the tasks of the arbitral tribunal, such as holding an initial conference, preparing a procedural timetable and adopting further appropriate procedural measures. In the same spirit, Articles 24 and 25 specify that the arbitral tribunal shall decide on time-sensitive

issues like further written submissions and time limits “after consulting with the parties”.

Besides the abovementioned changes, the Swiss Rules 2021 contain various **updates on punctual issues**, like e.g. the coordination in case of initiation of mediation proceedings during the arbitration (Article 19(6)), the costs of the proceedings (Articles 40 et seq. and Appendix B), and the publication of the awards (Article 44), as well as amendments in order to improve the structure and the wording of the provisions.

Conclusion

While the Swiss Rules have not undergone any revolution, the amendments will enhance the efficiency of the proceedings while maintaining great party autonomy, flexibility and cost-effectiveness. More exciting than the revised rules themselves, the new Swiss Arbitration Centre and the cooperation with ASA offer interesting opportunities for the future of Switzerland as a global arbitration hub. Having a common platform will surely boost innovation, which is necessary given the increasing competitiveness of the global arbitration market. The strong international presence of ASA, also in Asia with the Singapore chapter founded in 2016, will contribute to the Swiss Arbitration Centre’s standing worldwide. With its stable political and legal environment as well as arbitration-friendly courts, it makes no doubt that Switzerland will continue to be a preferred venue for arbitration in the years to come.

The Walder Wyss Newsletter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this Newsletter should seek specific advice on the matters which concern them.

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