Swiss arbitration revamped: new Swiss Arbitration Centre, revised Swiss Rules of International Arbitration 2021, and launch of Swiss arbitration platform

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The year 2021 continues to bring important changes to Swiss arbitration. Following the revision of Swiss arbitration law (see previous Pestalozzi Legal Update) at the beginning of this year, a second project has been implemented as of 1 June 2021: the transformation of the Swiss Chambers' Arbitration Institution (SCAI) into the Swiss Arbitration Centre, the revision of the Swiss Rules of International Arbitration (Swiss Rules 2021), and the launch of a new Swiss arbitration platform.

The Swiss Rules 2021 entered into force on 1 June 2021, replacing the previous version of 2012 (Swiss Rules 2012). For arbitration proceedings in which the Notice of Arbitration was submitted before 1 June 2021, the Swiss Rules 2012 continue to apply, unless the parties agree otherwise.

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Key takeaways

- **Swiss Chambers' Arbitration Institution (SCAI) is transformed into the Swiss Arbitration Centre.**
- **Swiss Rules 2021 apply to arbitration proceedings in which the Notice of Arbitration was submitted after 1 June 2021.**
- **Arbitration agreements referring to the SCAI or to the Swiss Chambers of Commerce remain valid and binding and are considered as referring to the Swiss Arbitration Centre.**
- **Swiss Rules 2021 bring a number of improvements and clarifications, but no fundamental changes.**
- **Court and Secretariat take a more active role in administering cases under the Swiss Rules 2021.**
- **New Swiss Arbitration platform brings together Swiss Arbitration Centre, ASA, Swiss Arbitration Academy and Swiss Arbitration Hub and serves as a point of access to everything related to arbitration in Switzerland.**

The new Swiss Arbitration Centre

The SCAI was originally established by the Chambers of Commerce of Basel, Bern, Central Switzerland, Geneva, Neuchâtel, Ticino and Zurich. The Swiss Arbitration Association (ASA) and the Chambers of Commerce announced in September 2020 that they would join forces in administering arbitrations and mediations under the Swiss Rules. In May 2021, the SCAI was officially converted into a Swiss limited company and rebranded the 'Swiss Arbitration Centre'. ASA has become the majority shareholder of the Swiss Arbitration Centre, while various Chambers of Commerce participate as minority shareholders.

The Swiss Arbitration Centre is the legal successor of the SCAI. Arbitration agreements referring to the SCAI or to the Swiss Chambers of Commerce remain valid and binding and are considered as referring to the Swiss Arbitration Centre (Article 1 (1)).

The Swiss Rules 2021 strengthen the role of the Court and the Secretariat of the newly established Swiss Arbitration Centre in administering arbitration proceedings. As was already the case under the previous Swiss Rules, the Court will examine whether there is manifestly no arbitration agreement if the respondent does not participate in the arbitration or raises a jurisdictional objection. In addition, the Swiss Rules 2021 clarify that the Court must also determine whether the arbitration agreements are manifestly incompatible where claims are made under more than one arbitration agreement (Article 5). This prima facie review by the Court does not affect the arbitral tribunal's competence to decide on any jurisdictional objections by the parties (Article 23 (1)).

The parties and the arbitral tribunal are required to copy the Secretariat in all communications under the Swiss Rules 2021 (Article 16 (2)). Furthermore, the Secretariat (and not the arbitral tribunal) alone is responsible for administering deposits (cf. Appendix B, Article 4.1) and for notifying awards (Article 34 (5)).

The administrative costs have been marginally increased in view of the upgraded services of the new Swiss Arbitration Centre (charged for amounts in dispute over CHF 300,000, capped at CHF 75,000 for amounts in dispute over CHF 250 million). However, the registration fee remains unchanged (CHF 4,500 for claims less than CHF 2 million, capped at CHF 8,000 for claims in excess of CHF 10 million) and the scale of arbitrators' fees has been slightly reduced. It is expected that the overall costs will remain the same or even decrease slightly.

New provisions on multi-contract and multi-party arbitrations

The Swiss Rules 2021 provide more detailed guidance for multi-contract and multi-party arbitrations. Article 4 of the previous Swiss Rules 2012 has been split into two articles: Article 6 (cross-claim, joinder, intervention) and Article 7 (consolidation).

A party asserting a claim against another respondent (cross-claim), a party asserting a claim against an additional party (joinder), or an additional party asserting a claim against an existing party (intervention), must do so by submitting a notice of claim; Article 3 (Notice of Arbitration) applies mutatis mutandis (Article 6 (1)). Before the constitution of the arbitral tribunal, the notice must be submitted to the Secretariat who will forward the notice to the addressee of the claim, all other parties and any confirmed arbitrator (Article 6 (2)). The Court will make a prima facie assessment of jurisdiction in accordance with Article 5 if the addressees of the claim and any other party raise a jurisdictional objection within 15 days (Article 6 (2)). Again, the final decision on jurisdiction rests with the arbitral tribunal (Article 6 (3)). Another new provision is included in Article 6 (4), which affords great flexibility to the arbitral tribunal to allow further forms of third-party participation or participation by amicus curiae briefs.

The consolidation of arbitral proceedings is set out in Article 7. The decision on whether to consolidate proceedings still rests with the Court, not the arbitral tribunal (Article 7 (1)). The proceedings shall be consolidated into the arbitration commenced first (Article 7 (3)), which is a welcome clarification compared to the previous Swiss Rules.

Paperless filings, remote hearings, cybersecurity and data protection

The Swiss Rules 2021 contain a number of new provisions designed to address current technological developments in international arbitration. These new provisions are in line with the current trend in international arbitration (for example the recently revised ICC Rules; see Pestalozzi Legal Update).

The Swiss Rules 2021 encourage paperless arbitrations: the Secretariat no longer requires hard copies of the Notice of Arbitration and other communications unless special circumstances apply (Article 3 (1), Article 16 (2)). However, the Swiss Rules 2021 do not provide a default rule for electronic filings. It is still up to the arbitral tribunal and the parties to decide whether submissions shall be made electronically.

The previous Rules already allowed witness examination by videoconference (Article 25 (4) Swiss Rules 2012). The Swiss Rules 2021 now clarify that any hearings may be held in person or remotely by videoconference or other appropriate means, as decided by the arbitral tribunal after consultation with the parties (Article 27 (2)).

The awareness of issues of data protection and cybersecurity has increased in recent years in international arbitration. This development is reflected in Article 19 (2), which now provides that issues of data protection and cybersecurity shall be discussed in the first case management conference to ensure an appropriate level of compliance and security.

Further improvements and clarifications

The parties can freely choose and replace their legal counsel. However, the arbitral tribunal may oppose the appointment of a new legal counsel if the appointment would put the impartiality or independence of the arbitral tribunal at risk (Article 16 (4)). The purpose of this provision is to prevent obstructions of the proceedings by designating new counsel that would create a conflict with the existing arbitral tribunal.

As was already customary under the previous Swiss Rules, Article 19 (2) now expressly provides that the arbitral tribunal shall hold a first case management conference as soon as practicable after receiving the file from the Secretariat. At the initial conference or promptly thereafter, the arbitral tribunal shall prepare a procedural timetable about the steps of the arbitration, including the time-limits for the written submissions, the date of any hearings, as well as the time required for the main decisions (Article 19 (3)), which presumably includes the final award.

Article 23 (3) clarifies that jurisdictional objections must be raised prior to any defense on the merits unless the arbitral tribunal allows a later objection, which is in line with Swiss case law and doctrine. Another notable change is that the arbitral tribunal shall, as a rule, decide jurisdictional objections as a preliminary question (Article 23 (4)).

Finally, the revised Swiss Rules give more attention to alternative dispute resolution. Article 19 (6) sets out that the parties may, at any time during the arbitration proceedings, agree to resolve their dispute by mediation or any other form of alternative dispute resolution. The Swiss Rules expressly refer to the Swiss Rules of Mediation (see Pestalozzi Legal Update) as one option for mediation. The arbitration proceedings will be stayed during the mediation unless agreed otherwise by the parties (Article 19 (6)).

Launch of a new Swiss Arbitration platform

The Swiss Arbitration Centre, ASA, Swiss Arbitration Academy and Swiss Arbitration Hub now cooperate under the new brand ‘Swiss Arbitration’. The new platform www.swissarbitration.org brings together these four organisations and serves as a convenient point of access for practitioners and users to everything related to commercial and investment arbitration in Switzerland. The Swiss Arbitration Academy offer post-graduate degrees in the field of arbitration. The Swiss Arbitration Hub is ASA’s platform for hearing logistics.

Conclusion

The transformation of the SCAI into the Swiss Arbitration Centre is a significant development in the Swiss arbitration landscape. This transformation is accompanied by the revision of the Swiss Rules, and the launch of a new innovative Swiss Arbitration platform. The revised Swiss Rules 2021 strengthen the role of the Centre and bring a number of improvements and clarifications. This development will further increase the efficiency and flexibility of arbitration proceedings administered under the Swiss Rules 2021.

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No legal or tax advice

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