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The revised version of the Swiss Rules of International Arbitration will come into effect in early 2012. Arbitrations initiated after their entry into force will be subject to the new Swiss Rules, which contain several important and welcome adjustments.

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The Revised Swiss Rules of International Arbitration

As of early 2012, arbitrations initiated in accordance with the Swiss Rules of International Arbitration will be subject to a revised version of these rules, which makes the choice of the Swiss Rules even more attractive for contracting parties.

In early 2012, the revised version of the Swiss Rules of International Arbitration («Swiss Rules») will come into force. From that point forward, all arbitrations initiated under the Swiss Rules will be subject to the new Swiss Rules absent an agreement to the contrary.

Background to the Revision

The previous version of the Swiss Rules, which was adopted on 1 January 2004 («2004 Swiss Rules»), was based on the United Nations Commission on International Trade Law Arbitration Rules of 1976 («UNCITRAL Rules»). The 2004 Swiss Rules adapted the UNCITRAL Rules to administered arbitrations and modern practice. Some 500 cases have been successfully and expeditiously dealt with under the 2004 Swiss Rules.

The «light» revision of the Swiss Rules aims at achieving three main goals: First, further enhancing efficiency in terms of time and cost; second, in support of the first aim, the revised Swiss Rules give certain additional powers to the body administering the proceedings; and third, while providing the body with these additional powers, the new Swiss Rules preserve the flexibility of the proceedings and the autonomy of the parties and the arbitral tribunal.

Further Enhancements in Time and Cost Efficiency of Proceedings

The essential new provision on the efficiency of the proceedings is art. 15(7). All participants are under an obligation to make every effort to contribute to efficient proceedings without unnecessary costs and delays. Any actions contrary to such efficiency may have an influence on the allocation of costs.

The proceedings for initiating an arbitration will also be amended. When required to designate an arbitrator as per their agreement, the parties must now nominate their arbitrator in the Notice of Arbitration or the Answer thereto respectively (art. 3(3)(f) and 3(7)(f)).

In addition, the rules applicable to challenges and appointment of arbitrators will be amended in order to further expedite the proceedings. Challenges must now be raised within 15 days after the party became aware of the ground giving rise to the challenge (art. 10(3)). Furthermore, the institution may, in certain circumstances, directly appoint arbitrators or decide not to replace an arbitrator at all, and authorise the remaining arbitrators to continue with the proceedings (art. 13(2)).

According to the revised Swiss Rules, the proceedings will be more «front loaded» in that all documents and other evidence on which parties rely should be attached to the Statement of Claim or the Statement of Defence respectively

(art. 18(3) and 19(2)). In this way, a prolonging of the proceedings is avoided. The revision does, however, place a higher standard on the completeness of the first full submissions filed by the parties.

Finally, in accordance with art. 15(8), the arbitral tribunal may, if the parties agree, take steps towards facilitating a settlement of the dispute. While this provision is not new to Germanic legal systems, it does constitute a new development under the regime of the Swiss Rules. This revision, which does not impose a duty, is also geared at increasing the flexibility and efficiency of the proceedings, and has shown to be very successful in practice.

Powers of the Institution

According to art. 1(4), the institution is empowered to supervise the arbitral proceeding in place of an otherwise competent judicial authority to the fullest extent permitted under the applicable law. This provision attempts to preserve the unrestricted process of arbitration by providing for a fall back competence of the institution for any procedural issue that may arise.

Provisions addressing the expanded power of the institution include arts. 2(3) and 5(3). According to art. 2(3), the institution may extend or shorten time limits it has fixed or has the authority to fix or amend. According to art. 5(3) – in the event of any failure in the constitution of the arbitral tribunal – the institution shall have all powers of constituting the arbitral tribunal. In particular, it may revoke any appointment that has already been made, and appoint or reappoint each of the arbitrators and designate one of

them as presiding arbitrator. The smooth operation of the proceedings is thereby guaranteed even if one party either does not actively participate in or obstructs the proceedings, or in case any difficulty in the process of designating and confirming arbitrators not expressly addressed in the Swiss Rules arises.

Consolidation and Joinder Are Possible

The provision addressing consolidation and joinder will undergo changes reflecting the day-to-day business relationships of multiple parties to an underlying transaction and multiple contracts. According to art. 4(1), the institution may decide to consolidate a new case with a pending proceeding after consulting with the parties and any confirmed arbitrator to all proceedings, if need be even by revoking the appointment of arbitrators. By this, the Swiss Rules provide utmost flexibility when deciding on the question of a potential consolidation.

Art. 4(2) allows for the joinder of third parties to the proceedings. Such joinder is possible in two ways: (i) a person who is already a party to an arbitration requests the joinder of third parties with or without filing a claim against those parties (*Streitverkündung* or *Streitverkündungsklage*) and; (ii) a third party that is not yet party to the arbitration requests to join the proceedings (*Neben- or Hauptintervention*). This provision offers more options than the revised ICC Rules, which do not permit a third party to join proceedings on its own motion or to request the joinder of a third party without filing a claim against it.

New Provisions on Emergency Relief and Interim Measures

Special notice should be taken of the new provisions on emergency relief and interim measures. Emergency relief is now available under art. 43. Before all arbitrators are confirmed (and even before the Notice of Arbitration has been submit-

ted) a (future) party to proceedings under the Swiss Rules may apply for urgent interim measures of protection. Such application is submitted to a sole emergency arbitrator who then makes his decision within fifteen days. The decision of an emergency arbitrator has the same effect as a decision of an arbitral tribunal on interim measures (art. 26), i.e. it can also take the form of an award. The decision is binding upon the parties until the arbitral tribunal renders its final award. Finally, in the event of particular urgency the emergency arbitrator – as an arbitral tribunal (art. 26(3)) – can also issue a preliminary order, i.e. rule on a request for interim measures before such request has been communicated to any other party, provided the communication is made at the latest together with the preliminary order and the other party is immediately afforded an opportunity to be heard.

Conclusion and Outlook

The Swiss Rules in force as of early 2012 should lead to an expedition of an already fast mechanism for dispute settlement. The revised Swiss Rules offer more flexibility and a leaner, yet very effective administration of the proceedings compared to other institutional arbitration rules, and therefore provide a very attractive dispute resolution option for parties negotiating commercial contracts both at the national and international level.

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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