THE 2012 SWISS RULES OF INTERNATIONAL ARBITRATION MORE EFFICIENCY AND EFFECTIVENESS OF ARBITRATION PROCEEDINGS

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Abstract. The present article discusses the main changes brought by the 2012 revision of the Swiss Rules made as a response to the evolution of arbitration practice. As a result, a profound analysis concerning the main novelties of the new Swiss Rules of International Arbitration, which make the latter a successful attempt to respond to the concrete needs of the business community, is provided.

Keywords. Swiss Arbitration Rules; Arbitration Proceedings; Procedural Effectiveness; Procedural Efficiency; Emergency Relief Proceedings.

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1. Introduction

The revised version of the Swiss Rules of International Arbitration (“Swiss Rules”) entered into force on 1 June 2012. This new edition, intended to be a “light” revision, does not affect the fundamentals which make the strength and attractiveness of the Swiss Rules, but is rather limited to certain improvements which will be addressed below.

Originally, the former Swiss Rules, entered into force on 1 January 2004, (“2004 Swiss Rules”) had been adopted to unify the rules governing international arbitrations administered by the Chambers of Commerce and Industry of Basel, Bern, Geneva, Neuchâtel, Ticino,

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Vaud and Zurich (“the Chambers”). The 2004 Swiss Rules replaced the previous arbitration rules of each Chamber. They already offered a flexible instrument, independent from any particular legal tradition and applied under the supervision of the Chambers by way of reasonably limited administration.2

The 2004 Swiss Rules were mainly based on the 1976 version of the UNCITRAL Rules of Arbitration (“1976 UNCITRAL Rules”).3 The differences compared to the 1976 UNCITRAL text were deliberately few to ensure that practitioners with some experience of the 1976 UNCITRAL Rules could find in the Swiss Rules a system that was familiar to them.4 Despite its proximity to the 1976 UNCITRAL Rules, the Swiss Rules contained a number of new provisions, the purpose of which was to take into account the evolution of international arbitration since 1976.5

As of 2010, the Chambers started considering, with a group of experts,6 whether the Rules had to be revised on a few points in order to take into account the evolution of arbitration practice. Although the new 2010 version of the UNCITRAL Rules of Arbitration was an important source of inspiration, the Chambers did not – intentionally – follow the changes brought by such new version as a model for the revision of the Swiss Rules7.

The evolution of the arbitration rules of other institutions (in particular those of the International Court of Arbitration of the International Chamber of Commerce) was also taken into account. The 2012 revision of the Swiss Rules was nevertheless intended to be as autonomous as possible and was mainly based on the practice developed since 2004.

3 Cf. C. Brunner, The Swiss Rules of International Arbitration: An Overview for Prospective Users, SchiedsVZ (German Arb. J.) 3/2010, p. 244; Ph. Habegger, op. cit., p. 270. A version of the 2004 Rules, in which the modifications compared to the UNCITRAL Arbitration Rules were italicised, was available on the website of the Swiss Chambers.
7 Ph. Habegger, op. cit., p. 271.
The Working Group on the Swiss Rules was driven by the following three main objectives when formulating amendments to the 2004 Swiss Rules:

- reinforcing the institutional aspects with the creation of the Arbitration Court of the Swiss Chambers' Arbitration Institution, the powers of which are more extensive compared to those in the past in order to meet some practical needs;

- enhancing procedural flexibility as well as both the parties' and the arbitral tribunal's autonomy;

- enhancing the efficiency of arbitration proceedings in terms of time and costs – an increasingly important criterion to users.

The present article discusses the main changes brought by the 2012 revision of the Swiss Rules. First, we shall discuss the changes aimed at reinforcing the institutional aspects with the creation of the Swiss Chambers' Arbitration Institution and its new Court of Arbitration [II]. Second, we shall analyse the new extensive powers granted to the Court of Arbitration [III]. Third, we shall examine the amendments aimed at enhancing procedural effectiveness and efficiency of arbitration proceedings [IV]. We will then focus on the introduction of an emergency arbitrator procedure [V] and conclude with final general remarks [VI].

II. The Swiss Chambers' Arbitration Institution and its New Court of Arbitration

Arbitration under the former 2004 Swiss Rules were characterised by decentralisation: arbitration proceedings have essentially been administered by the Chambers’ local arbitration committees which together formed a national Arbitration Committee for the purpose of the Swiss Rules. Part of the revision of the Swiss Rules was to reform and simplify this institutional structure to enhance the efficiency of the administration of the proceedings. The new structure which has now

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8 Some more specific functions, namely for the challenge of arbitrators or the designation of the seat of the arbitration, were attributed to the “Special Committee”, composed of some members of the national Arbitration Committee chosen according to the Chambers’ geographic distribution.
been set up is more akin to that of other institutions providing arbitration services.

The reform brought about three new entities:

- an institution which is independent from the seven Chambers (the Swiss Chambers’ Arbitration Institution);
- an Arbitration Court (the “Court”) in charge of supervising each arbitration proceeding;
- a Secretariat created to assist the Court.

A. THE SWISS CHAMBERS’ ARBITRATION INSTITUTION

Under the cover of an association governed by Swiss law (The Swiss Chambers of Commerce Association for Arbitration and Mediation), the relevant Chambers founded a truly autonomous arbitration institution, the Swiss Chambers’ Arbitration Institution.9 An important consequence of this change is that the model arbitration clause proposed in the 2012 Swiss Rules now refers to the “Swiss Rules of International Arbitration of the Swiss Chambers’ Arbitration Institution”, instead of the “Swiss Rules of International Arbitration of the Swiss Chambers of Commerce”.

B. THE ARBITRATION COURT

The second institutional change consisted in establishing a specific Arbitration Court, which is now in charge of supervising the arbitration proceedings.10 It is composed of experienced practitioners in international arbitration and replaces the National Arbitration Committee and the Special Committee.11 The composition, powers and functioning of the Court (and its internal committees) are described in the “Internal Rules of the Arbitration Court of the

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9 The Swiss Chambers’ Arbitration Institution is registered in the Commercial Register (in Basle). The former name Swiss Chambers’ Court of Arbitration and Mediation is no longer used.
10 Introduction, ad (b).
Swiss Chambers’ Arbitration Institution”, which are available on the website of the Swiss Chambers’ Arbitration Institution.\textsuperscript{12}

C. **The secretariat**

The Secretariat is in charge of exclusively administrative and managerial tasks relating to the arbitration proceedings which do not fall within the powers of the Court. The Secretariat works on a decentralised basis, since it has seven offices (one for each Chamber).\textsuperscript{13} It ensures the communication between the Court on the one hand and the parties and the arbitral tribunal on the other.

III. **The new powers of the Court of Arbitration**

The powers of the Court are rather broad. The Court has been vested with general powers which aim at enhancing the efficiency of arbitration proceedings.\textsuperscript{14} Hence, by submitting their dispute to arbitration under the new Swiss Rules, the parties confer onto the Court - subject to the law applicable to the arbitration - all the powers required for the purpose of supervising the arbitration proceedings otherwise vested in the competent judicial authority.\textsuperscript{15} In order to cover situations provided for in the new Code of Civil Procedure (“CCP”) which contains the law applicable to domestic arbitration in Switzerland,\textsuperscript{16} it was also added that the powers of the Court include 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.\textsuperscript{17} The Court may decide on the challenge of an arbitrator based on a ground arising from the applicable law, for example when the arbitrator does not have the qualifications as agreed upon between the parties.\textsuperscript{18}

\textsuperscript{12} www.swissarbitration.org/sa/download/internal_rules_2012.pdf
\textsuperscript{13} Art. 3(1) and Appendix A.
\textsuperscript{14} Ph. Habegger, *op. cit.*, p. 273.
\textsuperscript{15} Art. 1(4).
\textsuperscript{16} Art. 366(2) and 368 CCP, in conjunction with Art. 356(2).
\textsuperscript{17} Art. 1(4) *in fine*.
\textsuperscript{18} *E.g.* under Swiss law: Art. 180(1)(a) PILA; Art. 367(l)(a) CCP.
Regarding time-limits, the Court may, from now on, not only extend but also shorten any time-limit it has fixed or has the authority to fix or amend, if the circumstances so justify.\textsuperscript{19}

A major change in the new Swiss Rules relates to the \textit{prima facie} control of the existence of an arbitration agreement, which is now made by the Court. The test is no longer carried out by the institution upon receipt of the Notice of Arbitration. Instead, the Notice is sent directly to the Respondent.\textsuperscript{20} The Respondent is thus in a position to agree to submit voluntarily the dispute to the Rules if it so wishes, regardless of the content of the agreement (clause referring to the Swiss Rules, to another set of arbitration rules, \textit{ad hoc} or pathological arbitration clause). If the Respondent does not file an Answer to the Notice of Arbitration, or if it raises an objection to the arbitration being administered under the Rules,\textsuperscript{21} the Court shall administer the case, unless there is manifestly no agreement to arbitrate referring to the Swiss Rules.\textsuperscript{22} The Court shall examine the arbitration agreement exclusively on a \textit{prima facie} basis and shall let the arbitral tribunal make any decision required on its jurisdiction.\textsuperscript{23}

The Court has been granted reinforced powers in the constitution of the arbitral tribunal, to the extent permitted by the principle of parties' freedom in the choice of their arbitrators. In the event of any failure in the constitution of the arbitral tribunal,\textsuperscript{24} the Court shall even have “\textit{all powers}” to revoke an appointment already made, appoint or reappoint any of the arbitrators and designate one of them as presiding arbitrator.\textsuperscript{25} Compared to the 2004 version of the Rules, this new wording undeniably reinforces the authority of the Court and ensures the efficiency of the proceedings. The Court also

\textsuperscript{19} Art. 2(3).
\textsuperscript{20} Art. 3(6).
\textsuperscript{21} This is indeed an alternative. The first English version published when the Rules entered into force on 1 June 2012 contained a clerical error (cumulative conditions, “\textit{neither}…\textit{nor}”) which was rapidly amended.
\textsuperscript{22} Art. 3(12).
\textsuperscript{23} Ph. Habegger, \textit{op. cit.}, p. 276; B. Ehle and W. Jahnel, \textit{op. cit.}, p. 170.
\textsuperscript{24} The Court shall determine the number of arbitrators absent an agreement between the parties Art. 6(1). The Court shall confirm (or not) the arbitrator(s) designated by the parties or by the party-appointed arbitrators Art. 5(1). The Court is also responsible for appointing an arbitrator when a party or the party-appointed arbitrators fail to do so within the time-limit applicable Art. 7(3); Art. 8(2); Art. 8(5) and Art. 13(2).
\textsuperscript{25} Art. 5(3).
appoints the emergency arbitrator in the newly created emergency relief proceedings (which are described below).  

Before the 2012 revision of the Rules, the arbitration institution did not fix the deposits to cover the costs of the arbitration and, hence, did not determine the total amount of such costs at the end of the proceedings. It was the arbitral tribunal’s task to do so. Under the 2012 version of the Swiss Rules, the Court will exercise a greater control over the arbitral tribunal’s decisions on costs. The arbitral tribunal must from now on consult with the Court before requesting advances on costs from the parties, whether initial or supplementary deposits. The advances must be paid within 15 days compared to 30 days in the former version. The deposits will be held by the Secretariat or by the arbitral tribunal, according to the Secretariat’s decision.

In the revised version of the Swiss Rules, the arbitral tribunal cannot simply consult the institution to determine the costs of the arbitration before making its award (or termination order, or decision on interpretation, correction or additional award), it must submit its draft decision to the Secretariat for approval by the Court. The Court may also adjust these costs. The Court’s decision is binding upon the arbitral tribunal.

The mandatory approval by the Court is, however, limited to the costs of the arbitration in the narrow sense (registration fee and administrative costs; fees and expenses of the arbitrator(s) and the administrative secretary, if any, including any expert of the arbitral tribunal). The determination of the costs incurred by the parties (legal representation/assistance, witnesses and other costs) and their allocation are now a matter for the arbitral tribunal exclusively (the Chambers were previously consulted on this point)

26 Art. 43(2).
27 It should also be emphasised that the Schedule of Costs in Appendix B (Registration Fee, Administration Costs, arbitrators’ fees) has remained unchanged since 2004.
28 Art. 41(1) and (3).
29 Art. 41(4).
30 Appendix B, Art. 4.1.
31 Ph. Habegger, op. cit., p. 292.
32 Art. 40(4).
IV. Enhancing Procedural Effectiveness and Efficiency of Arbitration Proceedings

In line with the revision’s goal, various provisions have been modified or introduced in order to enhance the flexibility, effectiveness and efficiency of the proceedings.

Consistent with their obligation to act in good faith, the parties shall from now on make every effort to contribute to the efficient conduct of the proceedings and avoid unnecessary costs and delays.\(^{33}\) The parties also undertake to comply with any award or order made by the arbitral tribunal or the emergency arbitrator.\(^{34}\)

As regards the arbitral tribunal, it is now expressly authorised to take steps to “facilitate the settlement of the dispute before it”. In that case, the parties waive their right to challenge the arbitrator’s impartiality, particularly with respect to the knowledge that the arbitrator acquired in assisting the parties (like a mediator).\(^{35}\)

In order to ensure the rapid constitution of the arbitral tribunal, the revised Swiss Rules now provide that when the parties have agreed on the number of arbitrators, the name of the designated arbitrator shall be stated in the Notice of Arbitration (and in the Answer to the Notice for the Respondent).\(^{36}\)

As regards consolidation of cases, the changes brought by the 2012 revision are relatively minor. The Court shall decide whether it is possible to consolidate an arbitration with other pending arbitration proceeding(s).\(^{37}\) In doing so, the new Swiss Rules provide that the Court shall consult with all the parties involved, as well as any confirmed arbitrator.\(^{38}\) In addition, the Rules make now clear that the parties are deemed to have waived their right to designate an arbitrator.\(^{39}\) The Court may “revoke the appointment and confirmation of arbitrators” and itself appoint the arbitrators if it deems it appropriate.\(^{40}\)

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\(^{34}\) Art. 15(7).

\(^{35}\) Art. 15(8).

\(^{36}\) Art. 3(3)(h).

\(^{37}\) Art. 4(1).

\(^{38}\) Art. 4(I).

\(^{39}\) Ph. Habegger, op. cit., p. 278.

\(^{40}\) Art. 4(I), last sentence.
The powers of the Court are thus significant. However, the practice so far shows that the arbitral institution has not abused of such powers and that it endeavours to consolidate proceedings with the parties’ agreement or when the connection between the arbitrations proceedings (including in terms of timing, as regards the stage of the respective the proceedings) requires consolidation for the sake of procedural efficiency and common sense.\(^{41}\)

The new version of the Swiss Rules brought some changes regarding joinder of third parties,\(^{42}\) mainly terminological. It now refers to “one or more third persons” and no longer “third party”, as more than one third party may be concerned by a joinder. The Swiss Rules no longer use the word “party” to emphasise that cases other than the classic cross-claims against, or main intervention by, a third party are also covered, in particular situations where the third person does not become a true claimant or respondent asserting its own claims, but merely supports the relief sought by the main parties (forms of participation also known in some legal systems under the name of “side interventions”).\(^{43}\) When deciding on a joinder request, the arbitral tribunal shall “take into account all relevant circumstances” and consult with all the parties, “including the person or persons to be joined”.\(^{44}\)

In order to streamline the procedure for challenging an arbitrator, Article 11 has been reformulated in the revised Swiss Rules. The time-limit within which a challenge must be made is now indicated: a notice of challenge must be received by the Secretariat within 15 days after the party has become aware of circumstances giving rise to the challenge. An additional 15-day time-limit then starts running so that the parties

\(^{41}\) Ph. Habegger, op. cit., pp. 276-277.

\(^{42}\) Art. 4(2) contains an innovative provision with regard to the joinder of third parties, regardless of whether a request is made by the third party or by one of the main parties. From a purely procedural point of view and irrespective of the issues pertaining to the applicable law on arbitration (Is the third party bound by the arbitration agreement in question?), the participation of a third party does not depend on the subsequent consent of the parties. The parties are deemed to have accepted the possibility of a joinder by choosing to submit their dispute to the Swiss Rules. Thus, the initial decision of the arbitral tribunal on joinder is not a decision on jurisdiction (it may be later on if one of the parties and/or the third party raises a jurisdictional objection), but a purely procedural decision consisting in determining, in accordance with the discretion granted by the Rules, whether the joinder of a third party is justified and must be accepted in the case at hand. Cf. Ph. Habegger, op. cit., p. 280.

\(^{43}\) Art. 74-77 and 78-80 CCP. Ph. Habegger, op. cit., pp. 278-279.

\(^{44}\) Art. 4(2).
may reach an agreement on the challenge or the challenged arbitrator may withdraw, failing which the Court shall decide on the challenge.

The separate situation of the removal of an arbitrator by the Court is now better distinguished and covers the cases in which an arbitrator fails to perform his functions despite a written warning from the other arbitrators or from the Court.45

The replacement procedure contains a new broader wording (“in all instances in which an arbitrator has to be replaced”), no longer limited to the death or incapacity of an arbitrator. A replacement arbitrator is in principle appointed pursuant to the same procedure which led to the appointment of the arbitrator concerned.46 However, in exceptional circumstances and after consulting with the parties and any remaining arbitrators, the Court may directly appoint a replacement arbitrator or even allow that the remaining arbitrators proceed with the arbitration and make any award or decision after the closure of proceedings (as a so-called “truncated tribunal”).47 In case of replacement, the proceedings shall, as a rule, resume at the stage reached when the arbitrator who was replaced ceased to perform his functions, unless the arbitral tribunal decides otherwise.48

Major novelties have been brought by the 2012 revision of the Swiss Rules with respect to the provisions on interim measures of protection (Article 26). Firstly, the possibility of ex parte interim measures is now mentioned in so many words (Article 26(3)). In exceptional circumstances only, the arbitral tribunal may rule on a request for interim measures by way of a preliminary order before the request is communicated to any other party, provided that such communication is made at the latest together with the preliminary order and that the other parties are immediately granted the opportunity to be heard.49

Another expressed feature is that the arbitral tribunal may modify, suspend or terminate any interim measure granted, upon the application of any party, but also on its own motion in exceptional circumstances and with prior notice to the parties.50 The arbitral tribunal has also been granted authority to rule on claims for compensation for any damage caused by an unjustified interim measure or preliminary

45 Art. 12.
46 Ph. Habegger, op. cit., p. 283.
47 Art. 13.
50 Art. 26(1).
Finally, it is now stated that by submitting their dispute to arbitration under the Swiss Rules, the parties do not waive any right which they may have to seek interim relief from a judicial authority.\textsuperscript{52}

Regarding evidence, Articles 24 and 25 of the Swiss Rules have been redrafted to provide more clarity. Article 24 on the burden of proof and evidence provides that the arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence presented, and that it may also order the production of evidence (typically documents). The arbitral tribunal may also decide to meet at any place for inspection (of goods, documents, etc)\textsuperscript{53} or appoint one or more experts.\textsuperscript{54} In addition, the revised Rules more generally authorise any means of evidence which do not require the witnesses/ experts’ physical presence at the hearing, including, if necessary, by video conference.\textsuperscript{55} Finally, the 2012 version specifies that a party shall, as a rule, annex to its Statement of Claim / Statement of Defence all documents and other evidence on which it relies; this simultaneity bolsters the efficiency of the proceeding,\textsuperscript{56} and dissuades a discovery procedure, hence, a fast resolution of the dispute.

Article 29 on the closure of proceedings has been redrafted. In the previous version of the Swiss Rules, the arbitral tribunal was required to ask the parties whether they had any further proof to offer or witnesses to be heard or submissions to make before declaring the proceedings closed. From now on, the arbitral tribunal may declare the proceedings closed when it considers that the parties have had a “reasonable opportunity to present their respective cases on the matters to be decided in an award.”\textsuperscript{57} An order to reopen the proceedings may only be made in exceptional circumstances.\textsuperscript{58}

With a view to promoting efficiency and effectiveness, the revised Swiss Rules maintain the Expedited Procedure,\textsuperscript{59} which is often

\textsuperscript{51} Art. 26(4).
\textsuperscript{52} Art. 26(5).
\textsuperscript{53} Art. 16(3).
\textsuperscript{54} Art. 27.
\textsuperscript{55} Art. 25(4).
\textsuperscript{56} Art. 18(3) and Art. 19(2). Be that as it may, most procedural orders and provisional timetables require the parties to submit their evidence together with their submissions.
\textsuperscript{57} Art. 29(1).
\textsuperscript{58} Art. 29(2).
\textsuperscript{59} The parties are, as a rule, only entitled to submit a Statement of Claim and a Statement of Defence (in addition to the Notice of Arbitration and the Answer), including the answer
applied in practice. The main amendment consists in a Provisional Deposit of CHF 5’000 which the Court now requests the Claimant to pay upon receipt of a Notice of Arbitration submitted to the Expedited Procedure. This provisional advance is intended to cover the fees of the arbitral tribunal (a sole arbitrator as a rule), which must work expeditiously and cannot wait until the proper advance on costs it will fix has been paid. In order to ensure the effectiveness of this new rule, the file shall be transmitted to the arbitral tribunal only upon payment of the Provisional Deposit.

The content of Article 44, which offers extensive protection to the parties regarding confidentiality, has not been amended in the 2012 revision.

V. EMERGENCY RELIEF PROCEEDINGS

The main novelty of the 2012 version of the Swiss Rules is the introduction of an emergency arbitrator procedure (“Emergency Relief”) in Article 43, following the trend of what has been done by other arbitration institutions (in particular the SCC since 2010 and the ICC to any counterclaim, Art. 42(1)(b). Unless the parties have agreed that the dispute shall be decided on the basis of documentary evidence only, the arbitral tribunal shall hold a single hearing for the examination of witnesses/experts, and oral arguments (in principle in lieu of post-hearing submissions), Art. 42(1)(c). The award shall be made within six months from the date on which the Secretariat transmitted the file to the arbitral tribunal, Art. 42(1)(d). The reasons upon which the award is based may only be stated in summary form, Art. 42(1)(e).

33% of cases administered by the Swiss Chambers in 2011 are subject to the Expedite Proceedings provisions, Cf. Swiss Arbitration Institution Newsletter of 1-12 available at https://www.swissarbitration.org/sa/download/newsletter_2012_1.pdf

Appendix B, Art. 1.4. This provisional deposit is considered as part of the global advance on costs which the arbitral tribunal shall fix for the whole arbitration proceedings. It will be deducted from the share to be paid by the Claimant (Art. 41(1)).

Art. 42(1)(a).

Unless expressly agreed otherwise in writing, the parties undertake to keep confidential all awards and orders, as well as all materials submitted by another party in the arbitration (provided that such information is not already in the public domain or is not to be disclosed because of a legal duty or to pursue or protect a legal right). This confidentiality undertaking is also binding on the arbitrators and secretary of the arbitral tribunal, on the tribunal-appointed experts and on the members of the Swiss Chambers’ Arbitration Institution.

Annex II of the 2010 SCC Rules.
since 2012\textsuperscript{65}). This provision shall apply to all proceedings initiated on or after 1 June 2012, unless the parties agree otherwise.\textsuperscript{66}

The emergency procedure applies when a party seeks emergency relief before the arbitral tribunal is constituted, and even, if necessary, before the Notice of Arbitration has been filed.\textsuperscript{67} Once the arbitral tribunal is constituted, interim measures requested by a party are governed by Article 26 discussed above.

The party seeking urgent interim measures must submit to the Secretariat a specific application which, besides some elements which should normally be contained in any Notice of Arbitration,\textsuperscript{68} shall include a statement of the interim relief sought and the reasons relied upon (as well as the necessary comments on the language, seat of the arbitration and applicable law).\textsuperscript{69} In cases where the seat of the arbitration has not been determined or if the designation is unclear or incomplete, the Court shall determine the seat, without prejudice to the subsequent determination by the arbitral tribunal in accordance with Article 16(1).\textsuperscript{70} The application must also be accompanied by the confirmation of payment of the registration fee (CHF 4,500, non-refundable) and of the advance on costs related to the fees and expenses of the emergency arbitrator (CHF 20,000, a deposit which may eventually be partially refunded if the costs of the emergency arbitrator are lower). If these amounts are not paid, the Court will not proceed with the application.\textsuperscript{71}

Upon receipt of the application and payment of the registration fee and deposit, the Court shall appoint a sole arbitrator (the “emergency arbitrator”, who is subject to the same independence requirements as any arbitrator\textsuperscript{72}) and transmit the file to him. Such transfer will be made by the Court only after having had the opportunity to verify

\begin{itemize}
  \item \textsuperscript{65}Art. 29 of the 2012 ICC Rules.
  \item \textsuperscript{66}Art. 1(3) and 43(1). Ph. Habegger, \textit{op. cit.}, pp. 293-296; B. Ehle and W. Jahnel, \textit{op. cit.}, p. 175. In contrast to Art. 29(6)(a) of the 2012 ICC Rules and Art. 37(1) of the AAA/ICDR Rules providing that emergency proceedings only apply to arbitration agreements entered into after the entry into force of the emergency relief provisions, the Swiss Rules do not provide for such transitional rule. The emergency procedure is subject to the general rule in Art. 1(3) of the Swiss Rules and therefore applies to all arbitration proceedings in which the Notice of Arbitration was submitted on or after 1 June 2012, unless the parties agree otherwise.
  \item \textsuperscript{67}Ph. Habegger, \textit{op. cit.}, p. 295.
  \item \textsuperscript{68}Art. 3(3)(b) to (e).
  \item \textsuperscript{69}Art. 43(1). The applicant shall show the urgency of the measures to be taken (Art. 43(1)(a).
  \item \textsuperscript{70}Art. 43(3).
  \item \textsuperscript{71}Art. 43(1)(c); Appendix B, Art. 1.6.
  \item \textsuperscript{72}Art. 43(4).
\end{itemize}
two requirements, as follows. *Firstly*, the Court shall check the *prima facie* existence of an arbitration clause referring to the Swiss Rules (no emergency arbitrator will be appointed if there is manifestly no such arbitration agreement).\textsuperscript{73} *Secondly*, it shall assess whether it appears more appropriate to proceed with the constitution of the arbitral tribunal and transmit the application to it.\textsuperscript{74} In other words, the Court is called upon to determine whether the urgency is sufficiently serious to justify the appointment of an emergency arbitrator. Unless otherwise agreed by the parties, the emergency arbitrator may not serve as an arbitrator in any arbitration relating to the dispute for which he or she has acted as an emergency arbitrator.\textsuperscript{75}

The party submitting an application for emergency relief before its Notice of Arbitration shall file such Notice within ten days (in exceptional circumstances, the Court may extend this time-limit), failing which the Court shall terminate the emergency relief proceedings.\textsuperscript{76}

The emergency arbitrator shall make his decision within fifteen days from the date on which the Secretariat transmitted the file to him. This time-limit may be extended by agreement of the parties or by the Court in appropriate circumstances.\textsuperscript{77} The emergency arbitrator shall conduct the proceedings in the manner he considers appropriate, taking into account the urgency inherent to such proceedings and ensuring that each party has a reasonable opportunity to be heard on the application.\textsuperscript{78}

A decision of the emergency arbitrator has the same effect as a decision on interim measures made by an arbitral tribunal under Article 26.\textsuperscript{79} The decision can be modified, suspended or revoked by the emergency arbitrator or the arbitral tribunal after the file has been transmitted to it.\textsuperscript{80} Interim measures granted by the emergency arbitrator cease to be binding on the parties upon the rendering of the final award or the termination of the arbitration proceedings (or upon the termination of the emergency proceedings if the applicant has not filed its Notice of

\textsuperscript{73} Art. 43(2)(a).
\textsuperscript{74} Art. 43(2)(b).
\textsuperscript{75} Art. 43(11).
\textsuperscript{76} Art. 43(3).
\textsuperscript{77} Art. 43(7).
\textsuperscript{78} Art. 43(6).
\textsuperscript{79} Ph. Habegger, *op. cit.*, p. 303.
\textsuperscript{80} Art. 43(8).
Arbitration within the 10-day time-limit mentioned above), unless the arbitral tribunal decides otherwise in its award.\textsuperscript{81}

\section*{VI. CONCLUSION}

The Swiss Rules of International Arbitration of the Swiss Chambers’ Arbitration Institution are – and remain – a successful attempt to respond to the concrete needs of the business community. They are designed for a wide range of arbitrations, from small cases to very complex multi-party and/or multi-contract situations (in particular in view of the well-suited Article 4 on consolidation and joinder), allowing for tailor-made and cost-effective proceedings.

The main novelties in the 2012 Swiss Rules are the emergency arbitrator and the new or amended provisions aimed at an even more efficient streamlining of the proceedings. Although this has meant granting more powers to the institution and more cost control, the revision did not affect party autonomy. In that respect, the new established Court, assisted by the Secretariat, will certainly prove to be very useful.

\begin{footnote}
\textsuperscript{81} Art. 43(10).
\end{footnote}