

Anne Véronique Schlaepfer

Joint Seminar ASA-AIBL: Update on arbitration for users

# Update on the revised Swiss Rules



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# 1. Why revising the Swiss Rules?

- > To take into account seven years of administering cases governed by the 2004 Swiss Rules
- > Note: the revised Swiss Rules are not aligned with the recent modifications to the UNCITRAL Rules or other arbitration rules (e.g. ICC)

## 2. Purposes of the revision

- > Responding to expectations of business users
- > Enhancing the efficiency and flexibility of the rules
- > Clarifying and reinforcing the role of the institution
- > Clarifying specific provisions of the 2004 rules

# 3. Responding to expectations of business users

- > Two examples:
  - > Possibility to appoint an emergency arbitrator (Art. 43)
  - > Amendment regarding the power to order interim measures (Art. 26)

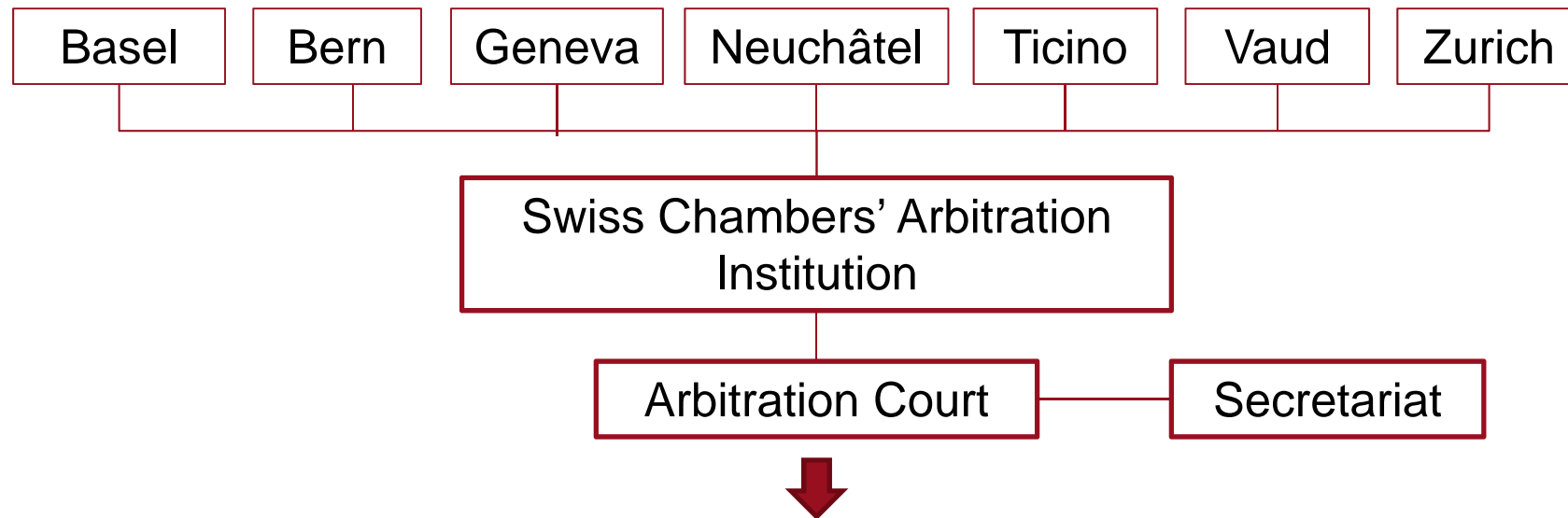
## 4. Enhancing the efficiency and flexibility of the rules

- > Flexibility:
  - > **The fundamental underlying principle: the parties and arbitrator(s), not the institution, are best positioned to organise the procedure**
  - > The rules provide for incentives, not obligations, to speed up and increase the efficiency of the proceedings

## 4. Enhancing the efficiency and flexibility of the rules (cont'd)

- > Efficiency:
  - > “All participants in the arbitral proceedings shall act in good faith, and make every effort to contribute to the efficient conduct of the proceedings and to avoid unnecessary costs and delays.” (Art. 15.7)
  - > The court may extend or shorten the time-limits (Art. 2.3)
  - > Periods of time for submissions should not exceed 45 days, unless the arbitral tribunal and the parties decide otherwise (Art. 23)
  - > Challenge of arbitrators: 15-day time period to notify the Secretariat; 15-day time period for the party(ies) to (dis)agree(s) and/or for the arbitrator to withdraw (Art. 11)

## 5. Clarifying and reinforcing the role of the institution



The Court shall render all decisions that are within its competence according to the Swiss Rules.



## 5. Clarifying and reinforcing the role of the institution (cont'd)

- > Additional powers of the institution:
  - > The parties confer on the Court all powers required to supervise the arbitral proceedings (Art. 1.4)
  - > Power to revoke arbitrators, if necessary, when consolidating proceedings (Art. 4.1)
  - > Power to appoint a replacement arbitrator in exceptional circumstances (Art. 13.2)
  - > The Court shall approve the arbitration costs in the award (Art. 40)
  - > The Court shall request a provisional deposit in case of expedited procedure (Section 1.4 of Appendix B)

## 6. Clarifying specific provisions of the 2004 rules

- > One example: consolidation and joinder
  - > If consolidation is requested, all parties and already confirmed arbitrators shall be consulted (Art. 4.1)
  - > If joinder is requested, all parties must be consulted, including the person(s) to be joined (Art. 4.2)

Thank you for your attention.

Anne Véronique Schlaepfer  
Partner  
Chairperson of the Arbitration Court of the  
Swiss Chambers' Arbitration Institution

[anne-veronique.schlaepfer@swlegal.ch](mailto:anne-veronique.schlaepfer@swlegal.ch)

Schellenberg Wittmer / Attorneys at Law  
15bis, rue des Alpes / P.O. Box 2088  
1211 Geneva 1 / Switzerland  
T +41 22 707 8000 / F +41 22 707 8001  
[www.swlegal.ch](http://www.swlegal.ch)