



## Switzerland: Neutrality, Arbitration and Mediation

### A long and unique (Hi)story



#### ➤ **From Switzerland's Foundation: The Swiss Federal Pact of 1291**

The 1291 Pact, also known as the Federal Charter, documents the Eternal Alliance, the union of three states (cantons) of what is now central Switzerland. It contains a very early type of dispute resolution clause referring to the selection of a neutral person to act as mediator/arbitrator in the event of disputes between the cantons. Throughout the years, additional cantons have progressively joined the initial three cantons to form the confederation of 26 cantons that is now known as Switzerland.

#### ➤ **Saint Nicholas of Flüe (1417-1487), Neutrality & Mediation**

Discussions about the advantages of Switzerland being neutral seem to date at least as far back as **1481** when former judge, pacificator and mediator, Nicholas of Flüe (later known as Brother Klaus) mediated a peace agreement between warring states, which consequently avoided a civil war in Switzerland and enabled two cantons (Fribourg and Solothurn) to join the Swiss Confederation.

#### ➤ **1516 – The Effective Start of Swiss Neutrality: the "Eternal" Peace Treaty**

Since the end of the Battle of Marignano and the signature of the Swiss/French "Eternal" Peace Treaty in Fribourg in 1516, Switzerland never initiated or participated voluntarily in any conflict between states. The Peace Treaty contained a long multi-tiered dispute resolution clause foreseeing negotiation, arbitration and mediation stages.

➤ **1815 – International Recognition of Switzerland's Neutrality**

Since 1516, Switzerland had to abandon temporarily neutrality only once, namely when it had to defend itself against Napoleon's invasion in 1798. This conflict was resolved by the Congress of Vienna, in 1815, where the Great Powers of Europe settled the boundaries of the European continent. The Great Powers acknowledged and committed to guarantee the neutrality of Switzerland, which became at that time a confederation of 22 independent cantons (Geneva, Valais and Neuchâtel joined the already existing 19 cantons).

➤ **1872 – The First Formal International Arbitration Case: The Alabama Case**

The *Alabama* case is the first formal third-party arbitration in diplomatic history. On 15 September 1872, the arbitration hearing took place in Geneva, ending a dispute between Great Britain and the United States of America for a series of claims for damages, following the American Civil War (1861-1865).



Since then, there have been thousands of recorded and unrecorded international disputes, whether of commercial or inter-state nature, that have been submitted to Swiss nationals as arbitrators or mediators, to Swiss arbitration institutions for administration, and/or that have been negotiated, mediated, heard and/or otherwise resolved in Switzerland due to its reputation for neutrality, discretion and quality services. Switzerland has, for a long time, been home to several important non-governmental dispute resolution organizations, such as: the United Nations ("UN"), the World Trade Organization ("WTO"), the World Intellectual Property Organization ("WIPO"), the Swiss Chambers' Arbitration Institution (for commercial disputes) ("SCAI"), the Court of Arbitration for Sport ("CAS"), and many more.





### ➤ **The Swiss Chambers of Commerce: Tradition and Experience**

Three of the Swiss Chambers of Commerce and Industry (CCIG in Geneva founded in 1865; ZHK in Zurich founded in 1873; and BBHK in Basel founded in 1876) are among the world's very first providers of international commercial arbitration services.

For centuries, the Swiss Chambers of Commerce have been providing arbitration services and appointing arbitrators and experts upon request, as well as informally assisting chamber members in resolving their disputes in a private and business-like manner.

During its first year of existence, in **1866**, the Geneva Chamber of Commerce, Industry and Services ("CCIG") was, for instance, already mandated to act as a neutral arbitrator/mediator and successfully assisted the local Association of Shoemakers and the Union of Workers to resolve their dispute and put an end to a strike.



The precursor of the Basel Chamber of Commerce was the first in Switzerland to publish arbitration rules, in **1869**, followed by the Zurich Chamber of Commerce ("ZHK") which established its first Commercial Arbitration Court in **1911**.

Most of the other Swiss Chambers of Commerce did not publish individual local arbitration rules and preferred to participate in and support the International Chamber of Commerce (the "ICC") and its **1922** ICC Arbitration Rules and the International Arbitration Court. The CCIG and the ZHK were for a long time active members of the Swiss Arbitration Committee of the ICC. The Swiss Chambers also kept providing *ad hoc* arbitration services, informally appointing arbitrators and experts upon request, and advising and referring its members to the ICC rules. During the 1930s, the director of the CCIG also acted as a Member of the Swiss Coal Arbitral Tribunal and as President of that tribunal's Geneva Section.

As requests for both domestic and international arbitral services increased over the years, new Swiss arbitration laws were enacted and international conventions were negotiated. Since **1980**, most of the Swiss Chambers of Commerce started publishing their own international arbitration rules and the ZHK even issued Mini Trial Rules in 1984.

During the **1990s**, two eminent members of the Swiss Arbitration Association ("[ASA](#)"), Mr Pierre Karrer and Mr Wolfgang Peter, suggested that the Swiss Chambers of Commerce consider creating a unified set of rules for international arbitration services that would be provided jointly by all the Swiss Chambers of Commerce. The Geneva and Vaud (Lausanne) Chambers of Commerce (headed by Mr Patrick Coïdan and Mr Jean-Luc Strohm) took the lead on the Chambers' side and soon after the Basel, Bern, Ticino and Zurich Chambers participated actively in the project that led to the drafting of the harmonized unified rules that were launched in 2004: the Swiss Rules of International Arbitration (the "[Swiss Rules](#)"). See further developments on the Swiss Rules below.



### ➤ **1927 – Geneva Convention on the Execution of Foreign Awards**

The first catalyst for international commercial arbitration was the Geneva Convention on the Execution of Foreign Awards of 1927. It set international standards for arbitration proceedings and provided for the execution of arbitral awards in member states. Switzerland was one of the first countries to ratify the Convention.

### ➤ **Post World War II Developments: Foreign Countries Discover Swiss Arbitration**

Both before and substantially after World War II, many foreign states and private parties discovered Switzerland as a convenient and reliable place for settling disputes by arbitration. The proceedings were private and confidential. Switzerland was centrally located and neutral. This political element was important as many of the early cases concerned business dealings between Eastern countries and the Western hemisphere. The Swiss Chambers of Commerce were regularly asked to appoint arbitrators and experts.

➤ **1965 – Ratification by Switzerland of the New York Convention**

On 1 June 1965, Switzerland ratified the 1958 **Convention on the Recognition and Enforcement of Foreign Arbitral Awards**, also known as the **New York Convention**, which was adopted by a United Nations' diplomatic conference on 10 June 1958, entered into force on 7 June 1959 and has been progressively ratified by 157 State Parties.

➤ **1969 – Swiss Inter-Cantonal Concordat on Arbitration**

A first step towards unification of the Swiss arbitration systems was the Swiss Inter-Cantonal Arbitration Convention (the so-called "Concordat") of 1969, which unified the arbitration laws of the participating cantons, although the arbitration rules of the different cantonal institutions remained in place. It was applicable to both domestic and international arbitration until 1989, when its scope was reduced to domestic arbitration only.

Since then, international arbitration has been governed by the 1987 Swiss Federal Private International Law Act ("[PILA](#)") and its chapter 12 on International Arbitration, discussed in more detail below. In 2008, the Concordat was itself replaced by chapter 3 of the Swiss Code of Civil Procedure ("[CCP](#)").

➤ **1987 – Swiss Federal Private International Law Act and its chapter 12 on International Arbitration**

The next milestone towards codification and unification of the Swiss international arbitration services was the entry into force of the [PILA](#) (SR 291) and its very modern chapter 12 on International Arbitration in 1989. Based on the UNCITRAL Model Law on Arbitration, the Swiss international arbitration system is based on only 17 articles. This still modern and lean law is applicable to all arbitrations seated in Switzerland if, at the time of the conclusion of the arbitration agreement, at least one of the parties had neither its domicile nor its habitual residence in Switzerland.

➤ **The 2008 unified Swiss Civil Code of Procedure (CCP): Arbitration and Mediation**

Since 2011, date of entry into force of the CCP, the Civil Procedure Law has been unified in Switzerland. For Swiss domestic arbitration cases, and for international arbitration cases where the parties have elected to apply the [CCP](#) (SR 272), the CCP chapter 3 applies (arts. 353-399). Conciliation and, for the first time, Mediation are also encouraged, and provided for, in articles 197-212 and 213-218 CCP.

The 2007 Swiss Rules of Commercial Mediation and the 2012 revised Swiss Rules of International Arbitration have been carefully drafted to comply with the new CCP and PILA and to allow both Swiss and foreign-based parties to resolve their disputes as cost-effectively and expeditiously as possible.

## ➤ The Swiss Rules and the SCAI Swiss Chambers' Arbitration Institution



### 2004

After 6 years of negotiation and careful drafting, the leading Swiss Chambers of Commerce and Industry finally unified their international arbitration rules and adopted, in 2004, the **Swiss Rules of International Arbitration**. The Swiss Rules were drafted by world leading experts in international arbitration, in order to reflect modern practice and cutting edge law in this field and to provide neutral commercial dispute resolution services to companies based everywhere in the world notwithstanding any local war or sanctions regimes.

The participating Chambers of Commerce and Industry were six: the Chambers of Basel, Bern, Geneva, Ticino (Lugano), Vaud (Lausanne) and Zurich.

The first President of the Arbitration Court, from 2004 to 2007, was [Dr Paolo Michele Patocchi](#), followed by [Prof. Franz Kellerhals](#) from 2007 to 2010, [Ms Anne-Véronique Schlaepfer](#) from 2010 to 2013, and [Dr Philipp Habegger](#) from 2013 to 2015. The President of the Arbitration Court since 2016 is [Ms Gabrielle Nater-Bass](#).



From left to right: Dr Paolo Michele Patocchi, Prof. Franz Kellerhals, Ms Anne-Véronique Schlaepfer, Dr Philipp Habegger, and Ms Gabrielle Nater-Bass

In 2004-2005, the Swiss Rules were chosen as the rules to be used by thousands of students and arbitrators for the 12<sup>th</sup> Vis International Commercial Arbitration Moot (the "Vis Moot") in Vienna and 2<sup>nd</sup> Vis (East) International Commercial Arbitration Moot (the "Vis East Moot") in Hong Kong.

## 2007

The Chamber of Commerce and Industry of Neuchâtel became the 7<sup>th</sup> member of the association. In the same year, all participating Chambers decided to offer an alternative method for the settling of domestic and international commercial disputes and adopted the [Swiss Rules of Commercial Mediation](#) in four languages: English, French, German and Italian.

## 2008

The **Swiss Chambers' Court of Arbitration and Mediation** was created in 2008 as an independent entity in charge of administering the proceedings for the Chambers.

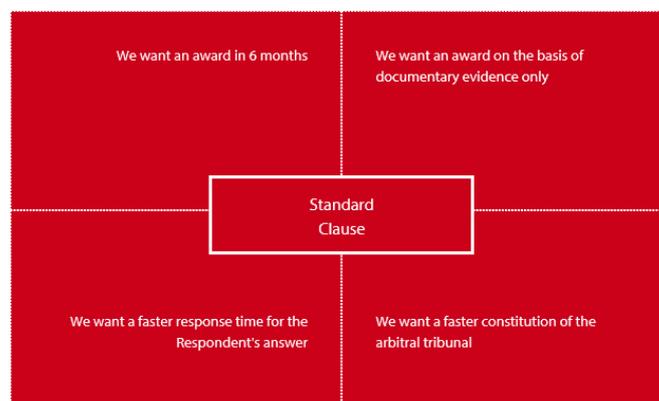
## 2012

The Swiss Rules of International Arbitration were revised ("[Swiss Rules 2012](#)") in order to adapt to the new CCP and to ensure that arbitration services could provide for both international and domestic arbitration cases. The revision exercise also enabled the Swiss Rules to remain at the forefront of international arbitration and to add new features assisting the parties in expediting their proceedings even further, in particular with the Emergency Relief provisions.

During the same year, the association of the seven Chambers was renamed as: **Swiss Chambers' Arbitration Institution ("SCAI")**.

## 2013

Throughout the course of their existence, the Swiss Chambers and SCAI constantly remained in touch with their users to get their feedback on the existing dispute resolution services and tools, and to search for new ones. The commodity trading industry indicated that, while the Swiss Rules expedited procedure and emergency relief were effective tools, the trading required even super-expedited dispute resolution processes. The CCIG created a joint think-tank who decided to develop a [list of specialized arbitrators and mediators](#) and designed an automated [customizable model arbitration and mediation clause](#) allowing the parties to choose between various options to super-expedite future arbitration proceedings.



The options can be chosen by simply clicking on the relevant parts of the customizable arbitration clause and then on "Show Arbitration Clause". The resulting arbitration clause can then be emailed forward or copied directly into a contract. The customizable clause also provides parties with the option to initiate mediation under the Swiss Rules of Mediation at any time before or during the arbitral proceedings.

## 2014

The [Rules of the Swiss Chambers' Arbitration Institution as Appointing Authority in UNCITRAL or other Ad Hoc Arbitration Proceedings](#) were adopted. This service consists of assisting parties engaged in UNCITRAL or other *ad hoc* arbitration proceedings in appointing arbitrators, taking decisions on challenges or other grounds for the replacement of arbitrators, as well as fixing the fees of the arbitrators or reviewing the costs and fees, if the parties so request.

## 2016

SCAI and its founding Swiss Chambers celebrated the 150 years of recorded arbitration and mediation services, and welcomed the 1000<sup>th</sup> Swiss Rules arbitration case.

Having ensured the effectiveness of the customizable clause and the resulting arbitral awards, SCAI decided to advertise it globally and advise all industries in need of super-expedited procedures to consider the use of the SCAI customizable model arbitration and mediation clause.

The distribution industry contacted SCAI and the CCIG to jointly develop a similar project as the customizable clause and specialized arbitrator list created for the commodity trading industry.

## 2017

SCAI won the Global Arbitration Review (GAR) Best Innovation Award, for its groundbreaking customizable arbitration clause, at the GAR Award Ceremony in Milan on 29 March 2017.

Together with the [International Distribution Institute \("IDI"\)](#), SCAI launched the [IDArb Project](#). Similar to what had been developed at the request of the commodity trading industry, the aim of IDArb is to facilitate the efficiency and expeditiousness of arbitration proceedings for disputes in the field of international distribution. A list of arbitrators highly specialized in distribution contracts-related disputes was compiled by a selecting committee which is composed of leading members of the international arbitration community and international distribution sector. A specific model arbitration clause for distribution agreements and specific Recommendations were drafted for the efficient conduct of the procedure, including in the case of expedited procedures. Arbitrations conducted as per this clause shall be conducted under the Swiss Rules.

## 2018... and beyond

As of 1 January 2018, the Swiss Chambers of commerce members of SCAI decided to stop providing arbitration and mediation services on their own and to transfer all current and future cases to the specialized team working for SCAI. SCAI has hence become a fully autonomous operational entity. This autonomy was notably requested by some parties who felt it would enable a clear operational independence of SCAI from the chambers and grant them a higher level of comfort regarding their perception and expectation for a fully confidential and impartial treatment of their procedures. As a result, a few minor logistical changes took place, such as the bank accounts, for instance. This change was accompanied by a reorganization of the organs of SCAI and a modification of the SCAI statutes to enable a swifter decision-making process. SCAI remains a not-for-profit association fully owned by its members, the Swiss Chambers of commerce, who are represented in the SCAI Board to decide on the strategical developments and ensure its continuity.

In 2018, a Users' Committee was formed in order to draft a revised version of the Swiss Rules of Commercial Mediation. This revision is expected to be finalized and launched in 2019.

As recognition of the quality of the Swiss Rules and of the services offered by SCAI, as well as their relevance, the Swiss Rules have been chosen, once again, for the 28<sup>th</sup> Vis Moot and 18<sup>th</sup> Vis East Moot that will take place in 2021 in Vienna and Hong Kong.



Bern



Lausanne



Lugano



Geneva



Zurich



Basel



Neuchâtel