

Swiss Arbitration Centre

Rules as Appointing
Authority and Case
Administrator in
UNCITRAL, *ad hoc* and
Other Proceedings



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GENERAL PROVISIONS

Article 1

1. If so empowered by an arbitration clause, a subsequent agreement between the parties, a designation by the Secretary General of the Permanent Court of Arbitration in The Hague, or otherwise, the Swiss Arbitration Centre shall act as appointing authority or case administrator, as the case may be, in accordance with the present rules (the "Rules"), unless expressly derogated from, and with the parties' agreement and/or other applicable rules.

2. The Rules shall also apply where an authority within the Swiss Arbitration Centre,¹ within one of the Chambers of Commerce that have adhered to the Swiss Rules of International Arbitration,² or within any other organisation that has transferred to the Swiss Arbitration Centre the authority to appoint arbitrators or provide support³ is called upon to act as appointing authority or case administrator in the cases set out in Article 1 (1).

3. Where the Swiss Arbitration Centre is empowered or requested to act as appointing authority or case administrator under Articles 1(1) or 1(2), such function shall be carried out by the Arbitration Court (the "Court") or, in case of a mediation, by the Secretariat of the Swiss Arbitration Centre (the "Secretariat") in consultation with the Advisory Council for Mediation (the "Advisory Council"), as applicable, pursuant to their Internal Rules.⁴

4. When requested to act under these Rules, the Swiss Arbitration Centre shall only proceed if it is satisfied that an agreement or applicable instrument authorizing it to act as appointing authority or case administrator and to render the requested service may exist.

5. The Swiss Arbitration Centre offers in particular the following services as appointing authority or case administrator:

- (a) appointment of arbitrators (Article 3);
- (b) decisions on the challenge of arbitrators and other reasons for the replacement of arbitrators (Article 4);
- (c) holding of deposits and related payments and advice; assistance in fixing the arbitrators' fees and expenses; participation in the review of decisions on costs and fees (Article 5);
- (d) appointment of mediators and experts (Article 6);

- (e) assistance in fixing the mediators' and experts' fees and expenses (Article 7); and
- (f) acting as a repository of published information under the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (Article 8).

6. If so empowered by an arbitration clause, a subsequent agreement between the parties, or otherwise, the Swiss Arbitration Centre shall consider providing services, besides those specifically indicated above, in accordance with the parties' agreement.

7. Upon request of the parties, and against payment of an additional fee,⁵ the Swiss Arbitration Centre may communicate the reasons for its decisions under these Rules.

REQUEST TO ACT AS APPOINTING AUTHORITY OR CASE ADMINISTRATOR

Article 2

1. In cases referred to in Article 1, a party or organisation requesting the Swiss Arbitration Centre to act as appointing authority or case administrator shall submit a request (the "Request") to the Swiss Arbitration Centre at one of the addresses of the Secretariat, postal or electronic, listed in Appendix A of these Rules.

2. The Secretariat shall notify the other party or parties of the Request with an indication of the date of receipt.

3. The Request shall contain all information that the requesting party or organisation deems appropriate in order to allow the Swiss Arbitration Centre to provide the requested service.

4. The Request and all documents annexed thereto shall be submitted to the Secretariat by e-mail. Upon request of the Secretariat, the requesting party shall provide hard copies of the Request. The parties and the Secretariat may agree to submit all further documents by e-mail or other appropriate electronic means. When submitting its Request, the requesting party or organisation shall arrange for and confirm payment to the Swiss Arbitration Centre, by transfer to the relevant bank account listed in Appendix A of these Rules, of the non-refundable Registration Fee of CHF 4,000. Should the requesting party or organisation fail to comply with either of these requirements, the Secretariat may set a time limit for compliance. If the requesting party or organization fails to comply with either of these requirements within the set time limit, the case shall be closed, without prejudice to the right of the requesting party or organisation to resubmit the Request at a later date.

1. Such as the President of the Arbitration Court or a member of the Secretariat of the Arbitration Court or a member of the Board of Directors or the Executive Director of the Swiss Arbitration Centre.

2. Currently the Chambers of Commerce and Industry of Basel, Bern, Central Switzerland, Geneva, Neuchâtel, Ticino, Vaud and Zurich.

3. These organizations include the *SIX Exchange Regulation* in Zurich, the *Association pour l'arbitrage international en matière de commerce et d'industrie (ARICI)* and the *Association pour l'Arbitrage en matière de Baux Commerciaux (ABC)* in Geneva.

4. The Internal Rules of the Court and of the Advisory Council are available under www.swissarbitration.org.

5. See Article 9.6.

APPOINTMENT OF ARBITRATORS

Article 3

1. When empowered to act as appointing authority of an arbitrator or arbitral tribunal, the Court shall exercise its discretion in making the appointment, unless specific rules apply to the appointment procedure (e.g. the UNCITRAL Arbitration Rules). The Court may decide that the list-procedure set forth in the UNCITRAL Arbitration Rules shall be followed for the appointment.

2. In any event, when making the appointment, the Court shall have regard to such considerations that are likely to secure the appointment of arbitrators who are independent of the parties and impartial. The Court shall also take into account that it may be advisable to appoint arbitrators of a nationality or region other than that of the parties. In case of a conflict, the Court's duty to appoint independent and impartial arbitrators shall prevail over any specific rules for the appointment procedure that may lead to the appointment of arbitrators who would lack those requirements.

3. When empowered to act as appointing authority in multi-party proceedings where the multiple claimants, on the one hand, and/or the multiple respondents, on the other hand, do not appoint an arbitrator jointly and are unable to otherwise agree on a method for the constitution of the arbitral tribunal, the Court may, upon request of a party, appoint some or all arbitrators, and shall designate the presiding arbitrator.

4. Before his or her appointment, the prospective arbitrator shall complete and sign a consent to appointment and statement of impartiality and independence form provided by the Secretariat. The prospective arbitrator shall disclose in writing to the Secretariat any facts or circumstances likely to give rise to justifiable doubts as to the arbitrator's independence and impartiality in the eyes of the parties.

CHALLENGE AND OTHER REASON TO REPLACE ARBITRATORS

Article 4

1. When empowered to make decisions upon challenges or requests for removal submitted by any party or a member of the arbitral tribunal, the Court will make its decision after the Secretariat has afforded an opportunity to the arbitrator concerned, the other party or parties and any other members of the arbitral tribunal to comment in writing within an adequate period of time. Such comments shall be communicated to the parties and to the arbitrators, before being submitted to the Court.

2. When empowered to appoint a replacement arbitrator, the Court shall follow the procedure set forth in Article 3. When the appointment of a replacement arbitrator is to take place after the closing of the proceedings, the Court may, upon the request of a party, and after having granted an opportunity to the parties and the remaining arbitrators to comment, determine that the other arbitrators shall proceed with the arbitration and make any decision or award.

ARBITRATORS' FEES AND EXPENSES

Article 5

1. When empowered to act as case administrator regarding the arbitrators' fees and expenses, the Court will provide the following services:

- (a) holding of deposit and related payments and advice;
- (b) assisting in fixing the arbitrators' fees and expenses; and/or
- (c) participating in the review of decisions on costs and fees.

2. The parties may empower the Secretariat to administer the deposit to be paid by the parties, in which case the Secretariat will hold the deposit in a separate bank account which is solely used for, and clearly identified as relating to, the arbitral proceedings in question.

3. With the approval of the Court, a portion of the deposit may from time to time be released to each member of the arbitral tribunal as an advance on costs, as the arbitration progresses.

4. The Court shall provide guidance to ensure that the arbitrators' fees and expenses are calculated and charged to the parties in accordance with their agreement or the relevant provisions of the applicable rules or procedures. In the absence of such agreement, rules or procedures, the Court shall provide its guidance based on the Swiss Rules of International Arbitration and the Guidelines for Arbitrators of the Swiss Arbitration Centre in force on the date of the Request. The arbitrators' fees shall be invoiced in the currency of the account opened for the purposes of the arbitration.

5. If the arbitrators' fees are to be based on an unspecified fee schedule, the Court, in fixing or advising on the arbitral tribunal's fees, shall be bound by the Schedule of Costs pursuant to Appendix B of the Swiss Rules of International Arbitration in force at the time of the commencement of the arbitration.

6. If the arbitrators' fees are to be based on the time spent by the members of the arbitral tribunal in the context of the arbitration, and in the absence of any other agreement on hourly rates between the parties and the arbitral tribunal, the hourly rates shall be between CHF 300 and CHF 700. In exceptional cases, the hourly rate may be higher, provided that (i) the arbitrators' fees are fixed by the Court following consultations with the arbitrator(s) and (ii) the fees are expressly approved by all parties. Unless otherwise agreed, the Court's decision with regard to the arbitrators' fees shall be binding upon the arbitral tribunal.

7. In determining the arbitrators' expenses, the applicable rules or procedures are supplemented by the Guidelines for Arbitrators of the Swiss Arbitration Centre in force at the time of the commencement of the arbitration.

8. All fees, expenses, and other charges may be subject to Value Added Tax at the applicable rate.

APPOINTMENT OF MEDIATORS AND EXPERTS

Article 6

1. When empowered to act as the appointing authority of a mediator or expert, the Swiss Arbitration Centre (through the Secretariat in consultation with the Advisory Council in relation to mediators, respectively the Court in relation to experts) may exercise its discretion in making the appointment, unless specific rules apply to the appointment procedure.

2. Article 3 of the Rules applies by analogy.

MEDIATORS' AND EXPERTS' FEES AND EXPENSES

Article 7

1. When empowered to act as case administrator regarding mediators' or experts' fees and expenses, the Swiss Arbitration Centre (through the Secretariat in consultation with the Advisory Council for questions related to mediation and with the Court for those related to expertise) will provide the following services:

- (a) holding of deposit and related payments and advice;
- (b) assisting in fixing the mediators' or experts' fees and expenses; and/or
- (c) participating in the review of decisions on costs and fees.

2. In mediation cases, in the absence of a specific agreement, rules or procedures, the Swiss Arbitration Centre shall provide its guidance based on the Swiss Rules of Mediation.

3. Article 5 of the Rules applies by analogy.

REPOSITORY OF PUBLISHED INFORMATION

Article 8

1. In UNCITRAL or non-UNCITRAL *ad hoc* investor-State arbitration proceedings, when so empowered by an agreement of the parties pursuant to Article 1(2)(a) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, the Swiss Arbitration Centre will act as a repository of information or documents related to the parties' arbitration when subject to transparency rules or regulations ("Published Information").

2. The Published Information can be made available to the public on the website of the Swiss Arbitration Centre or otherwise.

COSTS FOR SERVICES

Article 9

1. The non-refundable Registration Fee of CHF 4,000 (see Article 2(3)) covers the initial service requested from the Swiss Arbitration Centre.

2. Where more than one individual service is required, the Administrative Costs of any additional service provided by the Swiss Arbitration Centre pursuant to these Rules is CHF 1,500. Where the Swiss Arbitration Centre provides a

service over several years (e.g. administration of deposit paid by the parties) the Administrative Cost of such service is CHF 1,500 per commenced 12-month period.

3. If the service involves communications between the Secretariat and more than two parties, an additional Registration Fee of CHF 500 per additional party will be charged.

4. Where the Swiss Arbitration Centre provides a service to several parties, all parties having made a Request jointly shall bear the costs in equal shares.

5. The Swiss Arbitration Centre charges an annual Abeyance Fee of CHF 2,000 payable by the parties in equal shares, or, as the case may be, by the party which requested the stay of the proceedings, if procedures are in abeyance for more than three months.

6. The Swiss Arbitration Centre charges CHF 2,000 for communicating the reasons for one of its decisions under these Rules.

Service	Cost
Initial service (non-refundable Registration Fee)	CHF 4,000
Additional service	CHF 1,500
Service provided over several years	CHF 1,500 per 12-month period
Communications between the Secretariat and more than two parties	CHF 500 per additional party
Abeyance Fee	CHF 2,000 per 12-month period
Reasons for a decision	CHF 2,000 per decision

EXCLUSION OF LIABILITY

Article 10

Neither the members of the Board of Directors of the Swiss Arbitration Centre, the members of the Court and the Secretariat, the members of the Advisory Council, the arbitrators, mediators and experts appointed by the Court and the Advisory Council shall be liable for any act or omission in connection with any service rendered under these Rules, except if the act or omission is shown to constitute intentional wrongdoing or gross negligence.

Appendix A: Offices and Bank Account of the Secretariat

BANK ACCOUNT

For updated information on our bank account details please visit our website (www.swissarbitration.org) on the following page:

www.swissarbitration.org/centre/arbitration/arbitration-logistics/

All payments must be made in Swiss francs (CHF) and received net of any banking fees.

ADDRESSES OF THE SECRETARIAT:

Swiss Arbitration Centre

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