

Swiss Arbitration Centre

Supplemental Swiss Rules
for Corporate Law Disputes

2023



Supplemental Swiss Rules for Corporate Law Disputes

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Languages

The Supplemental Swiss Rules for Corporate Law Disputes are available in several languages on the Swiss Arbitration website: www.swissarbitration.org/centre/arbitration/arbitration-rules

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Introduction

- (a) The Swiss Rules of International Arbitration (the “**Swiss Rules**”) were first made available to users of arbitration services in 2004. They were amended in 2012, and again in 2021.
- (b) Arbitrations under the Swiss Rules are administered by the Arbitration Court (the “**Court**”) of the Swiss Arbitration Centre. The Court is assisted in its work by the Secretariat of the Court (the “**Secretariat**”).
- (c) Article 697n (the application of which is extended by references in Article 764(2) and Article 797a) of the Swiss Code of Obligations, in force as from 1 January 2023, provides that the articles of association of Swiss Companies Limited by Shares, Swiss Partnerships Limited by Shares and Swiss Limited Liability Companies may provide that “*corporate law disputes*” be settled by an arbitral tribunal seated in Switzerland, and that unless the articles of association provide otherwise, the statutory arbitration clause binds the company, the company’s governing bodies, the members of the governing bodies and the shareholders. Arbitration proceedings based on such statutory arbitration clauses are governed by the provisions on domestic arbitration in Part 3 of the Swiss Civil Procedure Code, to the express exclusion of the provisions governing international arbitration proceedings in Chapter 12 of the Swiss Private International Law Act. Article 697n of the Swiss Code of Obligations further provides that the articles of association may regulate the specifics of the arbitration proceedings, including by referring to institutional rules of arbitration. In any event, they shall ensure that “*persons who may be directly affected by the legal effects of the arbitral award*” are informed about the commencement and termination of the arbitration proceedings and may participate in the appointment of the arbitrators and in the arbitration proceedings as interveners.
- (d) The Swiss Arbitration Centre has issued these Supplemental Swiss Rules for Corporate Law Disputes (the “**Supplemental Swiss Rules**”) to supplement the Swiss Rules for the purpose of administering and conducting arbitration proceedings in relation to corporate law disputes as provided for under the revised Swiss Code of Obligations. They regulate for specificities of such corporate law disputes, implement statutory requirements and ensure that corporate law disputes can be settled through Swiss Rules arbitration efficiently and effectively.

Model Statutory Arbitration Clause

Recommended contents

- (1) Any corporate law dispute, excluding matters subject to summary proceedings pursuant to Article 250(c) of the Swiss Civil Procedure Code [and excluding actions for cancellation of outstanding equity shares according to the Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading], shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Arbitration Centre in force on the date on which the Notice of Arbitration is submitted in accordance with those Rules.
- (2) The seat of the arbitration shall be ... (name of the company seat/other city in Switzerland).
- (3) The arbitration proceedings shall be conducted in ... (insert desired language).

Possible additional contents

Number of arbitrators

- (4) [The number of arbitrators shall be (“one”, “three”, “one or three”).]

Appointment of arbitral tribunal by the Arbitration Court of the Swiss Arbitration Centre

- (5) [The Arbitration Court of the Swiss Arbitration Centre shall appoint the (arbitrator) / (arbitrators and designate the presiding arbitrator).]

Obligation to file an action with the arbitral tribunal only and to raise an objection to the jurisdiction of state courts

- (6) [The company and the members of the company’s governing bodies shall submit all disputes falling under the present arbitration clause to arbitration and shall object to the jurisdiction of the state courts over such disputes to the extent that any actions relating to such disputes are initiated before them.]

Costs

- (7) [The arbitral tribunal may, at the request of a claimant who is a shareholder of the company, order the company to pay the costs of the arbitration provided that, based on the facts and the applicable law, the claimant had reasonable cause to file the action and provided that the action does not conflict with predominant interests of the company.]
- (8) [The arbitral tribunal may order the company to pay any deposit of costs pursuant to Article 41 of the Swiss Rules and to advance the costs reasonably incurred or estimated to be incurred by a claimant who is a shareholder of the company for legal representation and legal assistance.]

Delivery

- (9) [All notifications regarding the commencement and the termination of the arbitration proceedings shall be delivered pursuant to and in the form provided for in the Supplemental Swiss Rules for Corporate Law Disputes. In addition, delivery shall be made via postal service and e-mail to all serviceable addresses and authorized recipients that have been provided by shareholders of the company for this purpose.]

Emergency Relief

- (10) [The emergency relief proceedings pursuant to Article 43 of the Swiss Rules shall not apply.]

Supplemental Swiss Rules for Corporate Law Disputes

SCOPE OF APPLICATION

Article 1

1. The Supplemental Swiss Rules for Corporate Law Disputes (the “Supplemental Swiss Rules”) shall apply to corporate law disputes pertaining to Swiss Companies Limited by Shares pursuant to Articles 620 *et seqq.*, Swiss Partnerships Limited by Shares pursuant to Articles 764 *et seqq.*, and Swiss Limited Liability Companies pursuant to Articles 772 *et seqq.* of the Swiss Code of Obligations.
2. The Supplemental Swiss Rules shall apply to arbitration proceedings initiated pursuant to a statutory arbitration clause contained in the articles of association of a corporate entity (the “Company”).
3. The Supplemental Swiss Rules supplement the Swiss Rules of International Arbitration (the “Swiss Rules”) and apply wherever the arbitration clause refers to the Swiss Rules. To the extent the Supplemental Swiss Rules do not specifically regulate a matter, the provisions of the Swiss Rules shall apply.
4. This version of the Supplemental Swiss Rules, in force as from 1 January 2023, shall apply to all arbitration proceedings in which the Notice of Arbitration is submitted on or after that date, unless the parties have agreed otherwise.

INFORMATION REGARDING THE COMMENCEMENT AND THE TERMINATION OF ARBITRATION PROCEEDINGS

Article 2

1. Within 5 days of the commencement of any arbitration proceedings, the Company shall take appropriate steps to notify persons who may be directly affected by the legal effects of the arbitral award (the “Affected Persons”) of the commencement of the arbitration proceedings. The Company shall notify the shareholders in particular, but without limitation, of the commencement of arbitration proceedings against the Company concerning the existence of the Company, the validity or legality of the resolutions of its bodies, the dissolution of the Company, or the determination of an appropriate compensation payment following a restructuring.
2. Where the Company is not a party to the arbitration proceedings, in addition to the items identified in Article 3 of the Swiss Rules, the Notice of Arbitration shall include the names, addresses, telephone numbers, and e-mail addresses of the Company and, where applicable, of its representatives.
3. Where the Company is not named as a party to the arbitration proceedings, when notifying the Notice of Arbitration pursuant to Article 3(6) of the Swiss Rules, the Secretariat shall also notify the Notice of Arbitration to the Company.
4. When directed at a shareholder, the notification pursuant to Article 2(1) shall be delivered in the form provided for in the articles of association for notifications by the Company to its shareholders and, where applicable, in accordance with any special provision in the articles of association concerning such notification. Persons other than shareholders may be notified by other appropriate means including publication in the Swiss Official Gazette of Commerce.
5. The notification pursuant to Article 2(1) shall outline in a concise manner the relief or remedy sought and the essential facts and background upon which the action is based. It shall contain the contact details of the Secretariat as set forth in Appendix A to the Swiss Rules. If the notification is made public, e.g. if it is published in the Swiss Official Gazette of Commerce, the publicized version of the notification may be shortened to provide the contact details along with a brief summary of the legal requests and essential facts.
6. Articles 2(1) and 2(4) shall apply *mutatis mutandis* where the arbitration proceedings are terminated.
7. The notification pursuant to Article 2(6) shall refer to the notification regarding the initiation of the arbitration proceedings, indicate the form of the termination of the arbitration proceedings, and contain a brief statement about the outcome of the case.

APPOINTMENT OF THE ARBITRAL TRIBUNAL

Article 3

1. The appointment of the arbitral tribunal shall be governed by Articles 10 and 11 of the Swiss Rules, subject to the following special provisions, which however shall not apply if the arbitration clause provides for the appointment of the arbitrators by the Court.

2. For a period of 30 days following the commencement of the arbitration proceedings pursuant to Article 3(2) of the Swiss Rules, persons who on a *prima facie* basis establish that they may be Affected Persons may submit comments on the appointment of the arbitral tribunal to the Court.

3. The Court shall inform persons who so request and on a *prima facie* basis establish that they may be Affected Persons of each procedural step for the appointment of arbitrators. Following the designation of each arbitrator and prior to the arbitrator's confirmation by the Court, persons who on a *prima facie* basis establish that they may be Affected Persons may submit reasoned written comments or objections concerning the appointment of the designated arbitrator to the Court. In case of any disclosure by any designated or confirmed arbitrator, persons who on a *prima facie* basis establish that they may be Affected Persons may submit reasoned written comments or objections within the same time limit within which the parties to the arbitration proceedings may comment. For these purposes, the Court shall, upon request, provide to such persons its pertinent correspondence with the parties and the arbitrators. The Court shall take such comments and objections into account when confirming the respective arbitrator in accordance with Article 8(1) of the Swiss Rules. The Court shall transmit a copy of its confirmation to persons having submitted such written comments or objections. The Court may, on its own initiative, make the information it deems relevant available to those persons who on a *prima facie* basis have established that they may be Affected Persons.

PARTICIPATION OF THIRD PERSONS

Article 4

Third persons may participate in the arbitration proceedings pursuant to Article 6(4) of the Swiss Rules. In deciding on whether to permit such participation, the arbitral tribunal shall in particular take into account the potential legal effects of the arbitral award on the respective third person. The arbitral tribunal shall ensure that Affected Persons are properly able to exercise their rights. The arbitral tribunal shall take appropriate measures to ensure the orderly and expeditious conduct of the proceedings.

INFORMATION REGARDING THE COURSE OF THE ARBITRATION PROCEEDINGS

Article 5

1. The Secretariat shall, upon request, communicate the names of the members of the arbitral tribunal and the contact details of the presiding arbitrator of the arbitral tribunal before which the arbitration proceedings are pending to persons who on a *prima facie* basis establish that they are Affected Persons. Before granting such request, the Secretariat shall consult with the arbitral tribunal, which may consult with the parties to the arbitration proceedings. The Secretariat shall provide the contact details of the persons whose request it has granted to the arbitral tribunal.

2. The arbitral tribunal shall, upon request, inform Affected Persons of the course of the arbitration proceedings and, in its discretion, may grant such persons access to parts of the file. The arbitral tribunal shall notify the parties thereof. Before granting such request, the arbitral tribunal may consult with the parties.

INTERIM MEASURES AND EMERGENCY RELIEF

Article 6

1. When seized with a request for interim measures pursuant to Article 29 of the Swiss Rules, the arbitral tribunal may, at its discretion, refrain from deciding or defer its decision if it deems it more appropriate for a judicial authority before which a parallel request is pending to decide first, even if the request before that judicial authority was made later.

2. The same applies *mutatis mutandis* to the emergency arbitrator pursuant to Article 43 of the Swiss Rules.