ASA Special Series No. 22 May 2004

# THE SWISS RULES OF INTERNATIONAL ARBITRATION

ASA Swiss Arbitration Association
Conference of January 23, 2004 in Zurich

Edited by Prof. Gabrielle Kaufmann-Kohler and Blaise Stucki

Association Suisse de l'Arbitrage
Swiss Arbitration Association
Schweiz. Vereinigung für Schiedsgerichtsbarkeit
Associazione svizzera per l'arbitrato

# THE EXPEDITED PROCEDURE UNDER THE SWISS RULES OF INTERNATIONAL ARBITRATION

Elliott Geisinger*

## 1. Introduction

Article 42 on Expedited Procedure is one of the main innovations that the Swiss Rules of International Arbitration ("Swiss Rules") have brought to the UNCITRAL Arbitration Rules. The innovation is twofold. First, the UNCITRAL Arbitration Rules contained no provision on expedited or accelerated arbitral proceedings. Article 42(1) of the Swiss Rules enables parties to agree to submit disputes to an Expedited Procedure, either in the arbitration agreement itself or after the dispute arises. Thus, the Swiss Rules reflect the policy decision made in several other international institutional arbitration rules to give the parties the possibility of using a form of "fast track" arbitration.[1] Second, Article 42(2) of the Swiss Rules takes things much further by providing that cases in which the amount in dispute is equal or inferior to CHF 1,000,000[2] shall, in principle, be conducted under the Expedited Procedure by a sole arbitrator, even if this had not been agreed previously by the parties.

The purpose of this paper is to give a historical background of the genesis of Article 42 of the Swiss Rules and of past experiences by Swiss chambers with expedited procedures, to provide some explanations as to the functioning of this provision and to highlight certain issues that it may raise in practice.

## 2. Background

### 2.1 Genesis of Article 42 of the Swiss Rules

The decision to introduce into the Swiss Rules a provision enabling the parties to elect an accelerated procedure was taken without any major discussion during the first session of the working group that drafted the rules.[3] The then-existing arbitration rules of the Chambers of

---

* Partner, Schellenberg Wittmer, Geneva.

1 See also, for instance, the "*WIPO Expedited Arbitration Rules*" of the World Intellectual Property Organization (<www.arbiter.wipo.int>) or the "*Rules for Expedited Arbitrations*" of the Arbitration Institute of the Stockholm Chamber of Commerce (<www.chamber.se/arbitration>). In a similar vein, Article 9 of the LCIA Rules provides for an "*Expedited Formation*" of the Arbitral Tribunal, but not – at least not expressly – for an expedited procedure once the Arbitral Tribunal has been constituted. Depending on the circumstances, an Arbitral Tribunal constituted under the "*Expedited Formation*" procedure could conduct accelerated proceedings in light of Article 14.1(ii) of the LCIA Rules. Since this would require an agreement in writing by the parties, the result would be similar to the adoption by the parties of expedited procedure rules once the dispute has arisen. However, the same could be said of any "expedited" procedure agreed by the parties and the Arbitral Tribunal under any institutional rules, so that this situation is not the same as that in which the applicable rules contain a specific provision on accelerated or expedited procedures.

2 CHF 1,000,000 is about USD 785,000 at the exchange rates prevailing when these lines were written (1 USD = about 1.275 CHF).

3 The working group was composed of representatives of each of the participating Chambers (Basel, Bern, Geneva, Lugano, Vaud and Zurich) and of members of ASA. The detailed drafting was carried out by a sub-group composed of Dr. Wolfgang Peter, Ms Daniela Jobin-Chiabudini of the Geneva Chamber of Commerce and Industry and the author of these lines, also members of the working group. The opinions voiced in this paper are solely those of the author, not of the working group or of the Chambers.

Commerce of Basel, Geneva and Lugano already contained this type of provision[4] and Article 42(1) of the Swiss Rules is based very broadly on those chambers' pre-existing rules.

As for submitting disputes to the Expedited Procedure in light of the relatively modest amount in dispute (Article 42(2) of the Swiss Rules), the concept was also mooted during the first session of the working group, but in a totally different context, namely when the working group's discussions had moved on to the schedule of costs. At that stage, the drafters were faced with the difficulty of avoiding arbitration costs that might seem disproportionate compared to the amount in dispute in "smaller" cases, whilst at the same time guaranteeing fair remuneration for arbitrators (and thereby the quality of the arbitral process). The best way to reconcile these two – equally legitimate and important – concerns was to encourage expeditiousness, hence the idea of submitting such cases to the Expedited Procedure conducted by a sole arbitrator. This means that Article 42(2) of the Swiss Rules cannot be understood properly without bearing in mind the issue of costs.

The drafters of the Swiss Rules did not lose sight of the commonly voiced objection that shorter proceedings do not necessarily mean lower costs. Put simply, the objection runs as follows: whether the arbitrators and counsel devote a total of X hours to a case over a period of eighteen months or six months, in the end, the total time spent remains the same. However, the drafters were also keenly aware of the maxim under which, "A task will expand with the time that is allocated to it." Thus, by shortening time limits and by simplifying the main procedural steps, the Expedited Procedure under the Swiss Rules incites the parties – and, perhaps more importantly, their counsel – to focus on the main facts and legal issues in order to arrive at an expeditious resolution of the dispute.

### 2.2 Past experiences with expedited procedures within the participating Chambers of Commerce

As mentioned above, the pre-existing rules of the Chambers of Commerce of Basel, Geneva and Lugano contained rules very similar to Article 42(1) of the Swiss Rules. (i.e., expedited procedures based on the parties' express choice). Past experiences with such procedures are varied.

One general observation is that the proportion of expedited procedures compared to the overall caseload was relatively modest. Basel had none, Geneva only about 4% of the overall cases and Lugano about 10%. In all of these cases, the application of the expedited procedure resulted from an arbitration agreement contained in the contract. There had been no cases in which the parties chose this form of procedure in a submission agreement or after the arbitration had already commenced. The fact that the model clauses for these rules

[4] See Article 41 of the Rules of Arbitration of the Basel Chamber of Commerce (1995), Article 31 of the Arbitration Rules of the Geneva Chamber of Commerce and Industry (1992) and Article 48 of the Arbitration Rules of the Chamber of Commerce of Ticino (Lugano Rules; 1997).



do not mention expedited procedures may explain the small number of cases, but only to a certain extent. However, it would probably be an oversimplification to assume simply that the relative rareness of proceedings under the expedited procedures necessarily means that few parties adopt such procedures in their contracts. It could also be that agreements in which parties insert arbitration clauses providing for expedited procedures are less likely to give rise to actual arbitral proceedings.

A second observation is that the fields in which the parties chose expedited procedures are extremely diverse. They included: personal service contracts, employment contracts, construction contracts (for smaller projects), real estate brokerage, sales contracts and share purchase agreements. In view of this considerable diversity, it cannot be said that expedited procedures were chosen more frequently in one area of commerce than in others.

A further and important observation is that in all cases except one, the amounts in dispute were relatively modest. All figures supplied by Lugano are significantly inferior to CHF 1,000,000 (the highest amount in dispute was CHF 500,000). In Geneva, the amounts in dispute ranged from CHF 48,420 (this case was terminated at an early stage) to CHF 19,500,000; half of the cases in Geneva related to total claims in excess of CHF 1,000,000[5] and the average amount in dispute without taking into account the highest and the lowest figure was CHF 1,372,000. The overall average between Geneva and Lugano (again excluding the highest and lowest figures) was CHF 1,114,660.

Where the proceedings were not terminated before the Arbitral Tribunal was formed (whether in Geneva or in Lugano), the dispute was submitted to a sole arbitrator in all but one matter (the exception being the CHF 19,500,000 arbitration before the chamber in Geneva).

Moreover, where the arbitration resulted in a final award,[6] the time limits for the rendering of the award were met in only 50% of the cases in Lugano and 66% in Geneva. In another case before the chamber in Geneva, the time limit for the award had been extended but the parties settled before the additional time elapsed. That being said, the extended time limits were never particularly long and never exceeded the six-month deadline significantly. Therefore, although several cases were not completed as quickly as contemplated by the rules, their duration was still short if compared to the overall average.

Finally, there were no cases before any of the three above-mentioned chambers in which the parties had provided for expedited procedure in the arbitration agreement and then chose to submit their case to "ordinary" proceedings after the dispute had arisen. In other words, once the parties had decided in favor of the expedited procedures, they never "opted out" at a later stage.

[5] After the CHF 19,500,000 case, the highest amount in dispute was CHF 2,600,000.

[6] The proportion of cases having settled before a final award was rendered is high (no less than 50% for Geneva).

The main lessons to be drawn from the above are the following:

- Either there are few clauses providing for expedited procedures, or parties having agreed to expedited procedures resort to arbitration more rarely (the latter hypothesis could be corroborated by the high settlement rate of those disputes that do go to arbitration).
- There do not appear to be any particular economic sectors in which parties choose the arbitration rules of Swiss chambers and in which expedited procedures are more common or favored than in others.
- The average amount in dispute based on past experience being CHF 1,114,660, the CHF 1,000,000 threshold set out at Article 42, paragraph 2 of the Swiss Rules is reasonable.
- There is a strong predominance of cases submitted to a sole arbitrator, so that the provisions of Article 42, paragraph 2(b) and (c) of the Swiss Rules reflect the reality in the field.
- Although the proportion of cases in which a time extension for rendering the award was granted is far from negligible, the total duration of these proceedings remained shorter than the general average. In other words, expedited proceedings under the pre-existing rules were truly faster than the "usual" proceedings.

## 3. Functioning of Article 42 of the Swiss Rules

### 3.1 Application of the Expedited Procedure as a result of the parties' agreement (Article 42(1))

Article 42(2) of the Swiss Rules provides that arbitral proceedings shall be conducted in an expedited form where the parties have so chosen (either when entering into the arbitration agreement or at a later date). This is a rather unexceptional proposition: by virtue of Article 182(1) of the Swiss Private International Law Act ("PILA"), the parties are free to determine the applicable procedure, including by making a reference to a set of pre-existing institutional rules, provided that the procedural rules agreed by the parties guarantee their right to be heard and to be treated equally.[7]

[7] For Swiss law on this issue, see P. LALIVE/J.-F. POUDRET/C. REYMOND, *Le droit suisse de l'arbitrage interne et international*, Editions Payot, Lausanne 1989, pp. 349-350, N. 1*ad* Article 182 of the PILA; M. SCHNEIDER in Honsell/Vogt/Schnyder/Berti (Eds.), *International Arbitration in Switzerland, An Introduction to and Commentary on Articles 176–194 of the Swiss Private International Law Statute*, Helbing & Lichtenhahn/Kluwer Law International, Basel/The Hague 2000, pp. 397-398, N. 3 and 11-13 *ad* Article 182 of the PILA. More generally, see for instance J.D.M. LEW/L.A. MISTELIS/S.M. KRÖLL, *Comparative International Commercial Arbitration*, Kluwer Law International, The Hague/London/New York 2003, p. 524; A. REDFERN/M. HUNTER, *Law and Practice of International Commercial Arbitration*, 3rd ed., Sweet & Maxwell, London 1999, p. 278.



The Swiss Rules do not state explicitly whether the parties' choice in favor of expedited procedures in clauses made under the pre-2004 rules (of Basel, Geneva or Lugano) should be taken as an agreement to conduct the arbitration under the Expedited Procedure in accordance with the Swiss Rules.[8] That being said, the author sees no compelling grounds to disregard the parties' choice in favor of an expedited procedure made under the earlier rules. This is all the more true as the Swiss Rules are closely modeled on the previously existing provisions. Also, if indeed the parties are dissatisfied, for whatever reason, with Article 42(1) of the Swiss Rules, they are free to elect to remain governed by the earlier rules in accordance with Article 1(3). Alternatively, nothing in the Swiss Rules prevents the parties from "opting out" of the Expedited Procedure by varying their arbitration clause, provided that the amount in dispute exceeds CHF 1,000,000. Therefore, whether or not the clause initially provided for expedited proceedings under the earlier rules, there is no doubt that the parties can agree to submit their arbitration to the "ordinary" procedure under the Swiss Rules, if the amount in dispute is higher than CHF 1,000,000.[9]

The Expedited Procedure is "*based on the foregoing provisions of these Rules.*" This means that arbitrations conducted under Article 42(1) follow most of the provisions applicable to any other arbitration under the Swiss Rules. In particular, the provisions on the transitional regime (Article 1(3)), the bringing of the arbitration and the initial submissions (Article 3), the constitution and composition of the Arbitral Tribunal (Articles 5 to 14) and the arbitral proceedings themselves, including the award and the provisions on costs (Articles 15 to 41) remain applicable in principle.

That being said, certain provisions of the rules may be difficult to reconcile with the very idea of an expedited procedure. For instance, the application of Article 4(1) of the Swiss Rules, on the consolidation of proceedings, will likely be applied in this context at best infrequently, given that the consolidation of a new case with an already pending arbitration will most often be incompatible with the time limit for rendering the award in the first arbitration (six months from the transmission of the file; see Article 42(1)(d)).[10] Moreover, the taking of evidence by way of tribunal-appointed experts (Article 27) will often be too time-consuming for the Arbitral Tribunal to render its award within the six-month deadline.[11] However, these are practical

[8] Pursuant to Article 1(1) and (3) of the Swiss Rules, the new rules "*shall govern international arbitrations, where an agreement to arbitrate refers to these Rules, or to the arbitration rules of the Chambers of Commerce and Industry of Basel, Bern, Geneva, Ticino, Vaud, Zurich*" and shall apply "*to all arbitral proceedings in which the Notice of Arbitration is submitted on or after*" January 1, 2004 unless the parties agree otherwise.

[9] The question whether the parties enjoy the same liberty in cases where the amount in dispute does not exceed CHF 1,000,000 is more problematic and will be addressed at section 4.1 below.

[10] Consolidation of two arbitrations under the Expedited Procedure would only be conceivable if the second proceedings come on the heels of the first and if the arbitral clause governing the second case also provides for the Expedited Procedure.

[11] The Expedited Procedure does not rule out expert evidence as such, since Article 42(1)(c) explicitly mentions hearings for experts. This is justified by the fact that expert evidence can also relate to very punctual technical matters (for instance the quality of certain goods or the authenticity of a signature).

issues that do not alter the principle that, on the whole, the Expedited Procedure follows basically the same procedure as "ordinary" cases conducted under the Swiss Rules.

The differences reside – as one would have guessed – in shorter time limits and in a simplification of the main steps of the proceedings. Thus, Article 42(1)(a) to (e) set out the following modifications to the "usual" procedure:

- The Chambers may shorten the time limits for the appointment of the Arbitral Tribunal.
- After the initial exchange of briefs, the parties are entitled, in principle, to only one further written submission.
- There is normally only one set of hearings for witnesses and/or experts, if the parties have not agreed that the case shall be decided on the basis of written evidence only.
- The award is to be rendered within six months from the transmission of the file to the Arbitral Tribunal.
- The award is motivated summarily, if the parties have not waived reasons entirely.

With respect to the six-month time limit for the rendering of the award, Article 42(1)(d) enables the Chambers to extend it "*in exceptional circumstances.*" Emphasis must be placed on the "*exceptional*" character of such extensions, failing which the very concept of the Expedited Procedure would be meaningless. Therefore, arbitrators sitting under the Swiss Rules would be ill-advised to consider the six-month time limit as a mere *délai d'ordre*, target or guideline.

Based on past experience, the reasons for such extensions usually lay with the parties or their counsel. In nearly all of the Geneva and Lugano cases referred to above in which the time limit was extended, time extensions were necessary either because the parties had requested evidentiary measures preventing the Tribunal from meeting the six-month deadline or because the parties had requested a stay of the proceedings pending settlement talks. In only one case did the Arbitral Tribunal ask for additional time to complete the award for reasons having, apparently, nothing to do with the parties; the extension requested and granted was short (about one month) and the extended deadline was met. Even in that case, the time between the transmission of the file to the Tribunal and the rendering of the award still remained extremely reasonable (about seven months).

The Swiss Rules do not state *who* is entitled to request extensions from the Chambers. In the absence of any restrictions, both the parties and the Arbitral Tribunal should have that possibility.



As for the monitoring by the Chambers of the progress in the arbitration and the legal consequences of a Tribunal's failure to render the award within the prescribed time limit, these issues will be addressed below at Section 4.4.

### 3.2 Application of the Expedited Procedure as a result of an amount in dispute not exceeding CHF 1,000,000 (Article 42(2))

#### a) Conditions for the application of Article 42(2)

Article 42(2) of the Swiss Rules provides that the arbitration will be conducted under the Expedited Procedure if the amount in dispute does not exceed CHF 1,000,000. In such cases, the Expedited Procedure applies *even if the parties had not provided for this in their arbitration agreement.* This provision is a considerable novelty, both as regards the UNCITRAL Arbitration Rules and from a comparative law perspective.

The drafters of the Swiss Rules were perfectly aware that this application of the Expedited Procedure might appear at first glance difficult to reconcile with the parties' expectations and the principle of party autonomy enshrined in Article 182(1) of the PILA. However, these issues were considered secondary compared to the necessity to strike a balance between reasonable costs in "modest" cases and a fair level of remuneration for the arbitrators, which is the very *raison d'être* of this provision.

Furthermore, it is fair to assume that potential issues relating to the parties' expectations will become increasingly rare with the passing of time. Indeed, such issues will arise mainly, perhaps even only, during the transitional period in which clauses drafted under the previous rules result in arbitrations governed by the new rules. Where the arbitration agreement refers to the Swiss Rules themselves, the parties actually make an indirect reference to the provisions of Article 42(2), precisely in accordance with Article 182(1) of the PILA. Moreover, parties having entered into an arbitration agreement referring to any of the earlier rules are free to choose the application of those previously existing rules in accordance with Article 1(3) of the Swiss Rules. Therefore, if the parties are dissatisfied with the provisions of Article 42(2), they can "opt out" of the Swiss Rules altogether (what is less obvious is whether such parties can choose to conduct the arbitration under the new rules to the exclusion of Article 42. This question will be examined at Section 4.1 below).

In accordance with Article 42(2), the amount in dispute is calculated by adding the claim and any counterclaim or set-off defense. Sections 2.4 to 2.7 of Appendix B, Schedule for Costs complete these provisions, especially for the accounting of interest claims, for currency exchange rates and for claims that are not quantified.[12]

[12] Section 2.4 of Appendix B states that set-off defences are not taken into account for the determination of the amount in dispute if the Arbitral Tribunal concludes, after consulting with the parties, that they do not create significant additional work. This provision is probably not applicable for the determination of the

Because the amount in dispute relevant for Article 42(2) takes into account counterclaims or set-off defenses, there is no practical way of knowing whether this provision applies before the Respondent has filed its Answer to the Notice of Arbitration in accordance with Article 3(7) to (9). Therefore, the filing by the Claimant of a Notice of Arbitration with claims that are less than CHF 1,000,000 does not (yet) trigger the application of Article 42(2). This happens only after it becomes apparent from the Respondent's Answer that the total amount in dispute is equal or inferior to CHF 1,000,000. If the Respondent does not file a counterclaim or raise a set-off defense at that stage,[13] Article 3(10) authorizes the Chambers to take into account only the Claimant's prayers for relief to determine whether Article 42(2) applies.

Sections 4.2 and 4.3 below will examine the impact, if any, that a change in the amount in dispute could have on the application of Article 42(2).

The drafters of the Swiss Rules did not lose sight of the fact that the complexity and foreseeable duration of arbitral proceedings are not determined only by the amount in dispute. For this reason, Article 42(2) enables the Chambers to decide that a case involving an amount in dispute not exceeding CHF 1,000,000 shall be conducted under the "usual" procedure after "*taking into account all relevant circumstances.*"

Under "*relevant circumstances*" one could consider such factors as complicated issues of fact (for instance technical or accounting matters, whether or not expert evidence is necessary) or, more rarely, of law (for instance the law governing the substance of the case is predictably difficult to establish); foreseeable practical complications in organizing hearings (for instance due to the number of witnesses or their places of residence); the existence or foreseeable character of *prima facie* legitimate requests for interim measures or for document production that may take some time to resolve; links with proceedings pending before another Arbitral Tribunal or national court that may warrant a stay of the arbitration; etc. However – and this must be emphasized – the intent of the drafters of the Swiss Rules was that the Expedited Procedure would be the rule for disputes not exceeding CHF 1,000,000 and that the Chambers could decide otherwise only in exceptional cases.

amount in dispute within the meaning of Article 42(2) of the Swiss Rules. First, this would be contrary to the black-letter text of Article 42(2). Second, there is a logical impossibility: Section 2.4 of Appendix B states that the Arbitral Tribunal decides whether to take into account set-off defences. Under the mechanisms of Article 42(2) of the Swiss Rules, the determination of the amount in dispute and the decision whether to submit the case to the Expedited Procedure *precedes* the constitution of the Arbitral Tribunal. Where the claims or set-off defences are in a currency other than the Swiss franc, the second sentence of Section 2.6 of Appendix B should normally determine the applicable exchange rate (that prevailing on the date when the claim or counterclaim was filed or when the set-off defence was raised).

13 Article 3(9) of the Swiss Rules provides only that the Respondent shall file counterclaims or raise set off defence "*in principle*" with its Answer to the Notice of Arbitration. The Arbitral Tribunal will set the final cut-off date for new or different claims on the basis of Article 20 of the Swiss Rules.



**b) Consequences of the application of Article 42(2)**

The main consequence of Article 42(2) is that the proceedings will be conducted under the Expedited Procedure set out at paragraph 1.

In addition, Article 42(2)(b) states that the arbitration will be referred to a sole arbitrator "*unless the arbitration agreement provides for a three-member Arbitral Tribunal.*" The drafters of the Swiss Rules considered that, whereas the parties' best interest to have "modest" disputes decided quickly in order to keep costs at a reasonable level justified an expedited process even if the arbitration agreement did not provide for this, it would be going too far to impose a sole arbitrator where the clause expressly provides for a three-member Tribunal. In other words, the drafters were not prepared to disregard the parties' positively expressed agreement in favor of three arbitrators.

Given the inherently higher costs of a three-member panel, which could frustrate the very purpose of submitting "modest" cases to the Expedited Procedure, Article 42(2)(c) states that, in proceedings where the arbitral clause requires a three-member Tribunal, the Chambers will invite the parties to agree to refer the case to a sole arbitrator. There is no obligation to change the arbitral clause in favor of a sole arbitrator: the parties remain free to arbitrate before a sole arbitrator or a panel of three arbitrators. However, as in all things, this liberty carries responsibilities. If the parties fail to agree to arbitrate before a sole arbitrator, the remuneration of the three arbitrators will result from the formulae set out in Appendix B, Schedule of Costs, but shall in no event be less than what would result from the application of a minimum hourly rate.[14]

### 3.3 Brief comments on the relation between paragraphs 1 and 2 of Article 42

It is important to distinguish two situations:

- Cases where the amount in dispute exceeds CHF 1,000,000:

  In such cases, the Expedited Procedure under Article 42(1) will apply *only* if the parties have agreed thereto. Article 42(2) does not apply, whether or not the parties have chosen the Expedited Procedure in their agreement to arbitrate. In practice, this has the following consequences. With respect to the number of arbitrators, there is no preference for a sole arbitrator, given that Article 42(2)(b) does not apply. Instead, the number of arbitrators in the Expedited Procedure under paragraph 1 is determined in accordance with Article 6.[15] As for the remuneration of the arbitrators, it is determined

14 Currently CHF 350 per hour in accordance with Section 2.8 of Appendix B, Schedule of Costs, to which Article 42(2)(c) refers.

15 To summarise, Article 6 of the Swiss Rules provides that the parties may agree on a sole arbitrator or on a three-member and that, in the absence of such agreement, the Chambers shall decide on the number of arbitrators.

by Appendix B, Schedule of Costs, without any minimum hourly rate even for a three-member Tribunal.

- Cases where the amount in dispute does not exceed CHF 1,000,000:

  In such cases, the provisions of Article 42(2) shall apply irrespective of whether the parties had previously agreed upon the Expedited Procedure.

  This has important consequences with respect to the number and the remuneration of the arbitrators. Regarding the number of arbitrators, Article 42(2)(b) and (c) apply, so that the matter will usually be referred to a sole arbitrator. In addition, Article 42(2)(c) will govern the arbitrators' fees. As a result, if the arbitration agreement provides for a three-member Tribunal and the parties fail to agree to refer the case to a sole arbitrator, the minimum hourly rate of Section 2.8 of Appendix B will govern, regardless of whether the arbitration agreement provides for the Expedited Procedure. Otherwise, a three-member panel appointed under a clause providing for the Expedited Procedure and three arbitrators would be deprived for no valid reason of the minimum hourly rate guaranteed by Article 42(2)(c).[16]

## 4. Selected questions that could arise in practice

### 4.1 May the parties "opt out" of the Expedited Procedure under Article 42(2) and, if so, to what extent?

One question that may arise in practice is whether the parties may exclude the application of Article 42 even where the amount in dispute does not exceed the CHF 1,000,000 threshold. This issue is most likely to be raised during the transitional phase in cases where the arbitration agreement does not refer to the Swiss Rules, but to the earlier rules of the participating chambers (especially if the earlier rules, such as those of the Chambers of Commerce of Vaud or of Zurich, did not provide specifically for expedited procedures in the first place). In such cases, the parties cannot have anticipated that their dispute would be submitted to the Expedited Procedure based on the amount in dispute. However, the question could conceivably arise also in cases where the arbitral clause refers to the Swiss Rules. To better answer this question, it is necessary to revisit briefly the parties' freedom to vary institutional rules in general.

16 Granted, the last sentence of Section 2.3 of Appendix B provides: "*The arbitrators' fees and the Chambers' Administrative Costs may exceed the amounts set out in the scale above,*" but it goes on to state that this may occur "*only in exceptional circumstances and with prior approval by the Chambers.*" Therefore, this provision – which was not at all drafted with the Expedited Procedure in mind – cannot replace the guarantee of Article 42(2)(c) and of Section 2.8 of Appendix B.



#### a) The parties' freedom to vary institutional rules in general

Article 182(1) of the PILA gives the parties the freedom to determine the conduct of the arbitral proceedings, including the liberty of making changes to institutional rules to the extent possible under such rules.[17] This is not uncommon in practice.[18]

The question is whether the parties are entirely free to make any changes to the institutional rules that they have chosen, or whether this freedom can only be exercised within certain limits. Fouchard/Gaillard/Goldman describe very aptly the starting point from which the answer to this question is reached:

"*By drafting and publishing its arbitration rules, the arbitral institution effectively puts out a permanent offer to contract, aimed at an indeterminate group of persons* [...]*, but made under fixed conditions.* [...] *This is a contract by adhesion, even though the parties have some scope to add to or depart from the rules laid down by the institution. When the request for arbitration is submitted to the institution and it begins to organize the proceedings, the contract is perfected.*"[19]

Since the arbitral institution makes an offer by publishing its rules and given that the parties' changes to the arbitral rules are counter-offer, the institution is not bound to accept the counter-offer and may refuse to administer arbitrations where the parties have changed provisions that are fundamental from the institution's point of view.[20] Such refusal is based on the fact that it is important for the arbitral institution to maintain at least the core provisions of its rules, for the sake of homogeneity and efficient administration.

To take an example, if parties to an ICC arbitral clause provide that their arbitration will be conducted under the ICC Rules, but without Terms of Reference, without a provisional timetable, without scrutiny of the award by the International Court of Arbitration and by

17 J.-F. POUDRET/S. BESSON, *Droit comparé de l'arbitrage international*, Bruylant/LGDJ/ Schulthess, Brussels/Paris/Zurich 2002, pp. 71-72, N. 96; M. SCHNEIDER, *op. cit.*, pp. 402-403, N. 18 *ad* Article 182 of the PILA. For party amendments to the ICC Rules (of which Article 15(1) appears to give precedence to the rules over the parties' agreements), see J.J. ARNALDEZ, *Réflexions sur l'autonomie et le caractère international du Règlement d'arbitrage de la CCI*, in Journal du droit international 1993, pp. 857-872, at p. 868; W.L. CRAIG/W.W. PARK/J. PAULSSON, *International Chamber of Commerce Arbitration*, 3rd ed., Oceana Publications, Dobbs Ferry 2000, p. 295; Y. DERAINS/E. SCHWARTZ, *A Guide to the New ICC Rules of Arbitration*, Kluwer Law International, The Hague/London/Boston 1998, p. 210, especially footnote 434.

18 For instance, it is possible to provide for arbitration under the ICC Rules of Arbitration and agree that the appointing authority will be different from the ICC (e.g., the competent court at the seat of the arbitration). Such tinkering with the ICC Rules is certainly not advisable: the author's experiences in this respect have been uniformly negative.

19 E. GAILLARD/J. SAVAGE (Eds), *Fouchard, Gaillard, Goldman on International Commercial Arbitration*, Kluwer Law International, The Hague/London/Boston 1999, p. 602. In the same vein, see P. FOUCHARD, *Relationships between the Arbitrator and the Parties and the Arbitral Institution*, in: The Status of the Arbitrator, Special Supplement to the ICC International Court of Arbitration Bulletin 1995, pp. 12-23, at p. 21; LEW/MISTELIS/KRÖLL, *op. cit.*, p. 296; M. SCHNEIDER, *op. cit.*, p. 402, N. 16 *ad* Article 182 of the PILA. For an in-depth analysis of the making of the contract between the parties and the arbitral institution, see T. KLAY, *L'arbitre*, Editions Dalloz 2001, pp. 553-575.

20 G. KAUFMANN-KOHLER, *Qui contrôle l'arbitrage? L'autonomie des parties, pouvoirs des arbitres et principe d'efficacité*, in: Liber Amicorum Claude Reymond, Autour de l'arbitrage, LITEC, Paris 2004, pp. 153-165, at p. 159; M. SCHNEIDER, *op. cit.*, pp. 402-403, N. 18 *ad* Article 182 of the PILA; POUDRET/BESSON, *op. cit.*, N. 96, p. 71.

providing that the national courts of the place of arbitration have exclusive jurisdiction to appoint, confirm, revoke and replace arbitrators, such proceedings would be "ICC" in name only. Accordingly, the ICC could – and very likely would – refuse to administer the arbitration.[21]

To summarize, the parties cannot purport to submit their arbitration to a pre-existing set of institutional rules, whilst at the same time agreeing to changes that either make the procedure unrecognizable or that derogate from rules that the institution considers fundamental or mandatory.

With respect to the Swiss Rules, there are few provisions that appear to meet that test. Indeed, the general philosophy that the drafters followed was that the parties and the Arbitral Tribunal were in the best position to assess and determine which procedures are the most appropriate. That being said, there are certainly some provisions from which the parties cannot depart. Article 15(1) is mandatory to the extent that it guarantees the parties' rights of due process (this results in any event from the mandatory provision of Article 182(3) of the PILA). The same applies to the parties' duty to act in good faith pursuant to Article 15(6) and to the arbitrators' duty to remain independent and impartial at all times (Article 9, which also results in any event from mandatory principles of Swiss law; see Articles 180(1)(c) of the PILA and case law relating to Article 190(2)(a) of the PILA).[22] It is unclear whether Article 1(2) of the Swiss Rules, which provides that the seat of the arbitration must be in Switzerland, is mandatory. At the time when this contribution was being finalized, the Chambers were discussing an amendment that would enable the parties to provide for a seat abroad, but no final decision had yet been reached.

The discussion regarding which provisions of the Swiss Rules are mandatory or fundamental exceed the scope of this paper. Useful guidance can be found in commentaries on the UNCITRAL ArbitrationRules.

**b) The parties' freedom to "opt out" of Article 42(2)**

The author considers that Article 42(2) of the Swiss Rules is not a "mandatory" or "fundamental" provision, *to the extent that it safeguards the parties' interests.*

Indeed, this provision is designed to take into account the parties' interest in expeditiousness and minimized costs where the amount in dispute is relatively modest. The parties may hold a different view of their own best interests and there is no overriding reason to disregard the parties' own judgment. Likewise, it is not in the interest of the Chambers to impose upon the

21 CRAIG/PARK/PAULSSON, *op. cit.*, p. 295, footnote 1; DERAINS/SCHWARTZ, *op. cit.*, p. 210, footnote 434.

22 By contrast, for instance, it is extremely doubtful whether Article 4 of the Swiss Rules (on joinder of proceedings and the participation of third parties) is a "fundamental" or "mandatory" provision that the parties cannot vary or exclude altogether. This provision was the object of some debate during the ASA Conference of 23 January 2004.



parties a product that they do not want, or to attempt to "*faire le bonheur des gens malgré eux.*"

Moreover, Article 42(2) states that the Chambers may decide that the Expedited Procedure will not apply in light of all relevant circumstances. Why grant the arbitral institution the right to make that decision and deny the parties that very same prerogative? In that connection, the parties' outright unwillingness to accept the Expedited Procedure could conceivably be one of the "*relevant circumstances*" that the Chambers can take into account when deciding whether to make an exception to Article 42(2) of the Swiss Rules.

However, certain provisions relating to the Expedited Procedure do not safeguard only the parties' interests. To that extent, the parties may not change the rules unilaterally. Article 42(2)(c) of the Swiss Rules takes into account the perfectly legitimate interest of the arbitrators to receive adequate compensation by guaranteeing a minimum hourly rate for a three-member Tribunal. In turn, this provision is designed to serve the general interest of maintaining a high level of quality in arbitrations conducted under the Swiss Rules. For this reason, it is submitted that this provision should remain applicable even if the parties have "opted out" of the Expedited Procedure. For that matter, the author considers that, if the parties exclude the Expedited Procedure in "modest" cases conducted by a sole arbitrator, the minimum hourly rate of Section 2.8 of Appendix B should also apply to the sole arbitrator's fees by way of an analogous application of Article 42(2)(c).

**4.2 What is the impact, if any, of an increase of the amount in dispute intervening in the course of proceedings conducted under Article 42, paragraph 2?**

It is not infrequent that the amounts of claims increase in the course of arbitral proceedings. What if the aggregate of claims and counterclaims exceeds the CHF 1,000,000 threshold once the case has already been submitted to the Expedited Procedure in accordance with Article 42(2)?

Article 3(10) of the Swiss Rules seems, at first glance, to provide an answer. This provision states that, where the Respondent does not file a counterclaim or raise a set-off defense in its Answer to the Notice of Arbitration, the Chambers may take into account only the amount of the claims set out in the Notice of Arbitration to determine whether Article 42(2) will apply. It could be argued that, by taking into account the risk of future counterclaims or set-off defenses and by enabling the Chambers to submit the arbitration to the Expedited Procedure nevertheless, this provision rules out any changes to the procedural regime of the arbitration in case the amounts in dispute increase subsequently. However, it is submitted that Article 3(10) does not rule out later reconsideration of decisions taken under Article 42(2). On the contrary, given that this provision gives the Chambers the *possibility*, not the obligation, to take into account only the Claimant's prayers for relief as set out in the Notice of Arbitration

when deciding on the application of Article 42(2), it implicitly means that the Chambers could wait until a later stage in the proceedings to make that decision. Moreover, Article 3(10) only addresses the issue of when the Chambers shall decide whether to submit the case to the Expedited Procedure. It does not appear to contemplate the question of whether the Chambers may *reverse* that decision.

In order to better resolve this issue, it is necessary to distinguish between two questions.

**a) Should the Expedited Procedure continue to apply at all?**

The first question is whether the Expedited Procedure no longer governs at all and the arbitration is conducted under the "usual" procedure due to the fact that the amount in dispute comes to exceed CHF 1,000,000 during the arbitration.

The author considers that there is no absolute and universal answer to this question and that the solution will depend on the facts of each case. The mere circumstance that the amounts in dispute have increased does not mean that the actual issues that the Tribunal needs to resolve have changed, as can be shown with the following example:

- A contractor brings arbitral proceedings against a shipper for breach of a framework transportation contract, due to the fact that the shipper has failed to deliver equipment to a construction site within the contractual time limit.
- The shipper's delay has resulted in the owner applying penalties against the contractor for late completion of a portion of the works.
- The contractor sues the shipper to recover the amount of these penalties. The amount of those penalties, hence the quantum of damages sought by the contractor from the shipper, will increase as long as the equipment is not delivered;
- The shipper refuses to deliver the equipment and disputes the principle of liability (arguing that the contractor failed to make payments for earlier shipments under the same framework transportation agreement, and that as a result the shipper is entitled to withhold the equipment) without disputing the quantification of the damages, nor the fact that such damages will increase as long as the equipment is not delivered to the site;
- At the date when the Notice of Arbitration was filed in accordance with Article 3 of the Swiss Rules, the amount of penalties was CHF 800,000; this amount increases to CHF 1,600,000 by the time the contractor files his full Statement of Claim pursuant to Article 18 of the Swiss Rules.



In this example, the only issue that the Arbitral Tribunal must resolve – is the shipper liable at all? – remains the same irrespective of quantum. Therefore, there is no compelling reason to modify the timetable of the arbitration.

The same will not be true where the increase of the amount in dispute is coupled with a multiplication of issues and/or with additional complexities of the case, so that the six-month time limit for the rendering of the award has become entirely illusory. A variation on the above example illustrates this point:

- The basic situation is the same at the date when the Notice of Arbitration is filed (claim in an amount of CHF 800,000; shipper denies liability and argues that it is entitled to withhold the equipment based on the contractor's failure to settle earlier invoices under the same framework contract).
- Between the date of filing of the Notice of Arbitration and the time when the contractor files its full Statement of Claim, the equipment is destroyed while in the shipper's custody.
- In the Statement of Claim, the contractor sues also for the value of the equipment (CHF 30,000,000), in addition to the penalties applied by the owner.
- The shipper claims that the equipment was destroyed because it had been improperly packaged for transportation by the contractor; this defense will require expert evidence.

In such cases, it would probably be better to acknowledge that the Expedited Procedure is no longer appropriate or even realistic and to conduct the proceedings under Articles 15 to 30. The only other solution would be for the Arbitral Tribunal to seek successive extensions of the time limit under Article 42(1)(d). This would be highly unsatisfactory, for the Arbitral Tribunal's freedom to determine the structure and timeframe of the proceedings would depend on whether the Chambers grant extensions of the Tribunal's own deadline for rendering the award. The resulting uncertainty would be very undesirable.

The decision to modify the format of the proceedings would normally have to be taken by the Chambers, based on the fact that it is the Chambers who decide whether Article 42(2) applies in the first place. The decision would be made upon the request of either party or of the Arbitral Tribunal. If all parties and the Tribunal make a joint request, there would be little point for the Chambers to deny it. The author considers that it would be imprudent for the Chambers to raise the issue of their own initiative. The parties and the Tribunal are in a better position than the Chambers to determine whether the applicable procedural rules require an adjustment. In any event, it is obvious that the Chambers cannot modify the procedure without first consulting with the parties and the Tribunal.

**b) Does an increase of the amount in dispute have an impact on the constitution of the Arbitral Tribunal?**

The second question relates to the constitution of the Arbitral Tribunal in cases where the arbitral clause provides for a three-member panel and the parties have agreed to refer the case to a sole arbitrator in accordance with Article 42(2)(b). If the amount in dispute comes to exceed the CHF 1,000,000 million threshold, does this affect the parties' agreement? In particular, could a party validly argue that its acceptance of a sole arbitrator was predicated on the circumstance that the amount in dispute was less than CHF 1,000,000 and that, given that this fact has changed, its acceptance is no longer valid?

Again, there does not appear to be one single answer. To take the example cited above (contractor suing a shipper for delays in delivery of equipment resulting in penalties being applied by the owner), it would appear unreasonable to re-open the constitution phase of the Arbitral Tribunal merely because certain additional amounts are claimed without this altering the issues that the sole arbitrator must resolve. However, if the increase in the amount in dispute is due to fundamentally new circumstances (*vide* the variation to the example), the argument based on the fundamentals of a party's agreement to submit the case to a sole arbitrator carries much more weight. In this type of situation, it may become necessary to revisit the constitution of the Arbitral Tribunal.

If the Chambers consider that it would be justified to refer the matter to a three-member panel, the least inconvenient solution would be to decide that the sole arbitrator will become the presiding arbitrator and to enable both parties to appoint one co-arbitrator. Any such decision would probably also mean in practice that the procedure would no longer be expedited, so that the provisions of Article 42 would no longer apply at all.

In any event, the worst solution would be to compel the party whose claims have increased to commence new proceedings by filing a new Notice of Arbitration, since this would result in duplication of and a danger of conflicting decisions. Article 4(1) of the Swiss Rules would not resolve the problem, since this provision only enables the Chambers to refer the new case to the Tribunal constituted for the first arbitration, i.e., the sole arbitrator.

As a final comment, it appears advisable to let the parties raise the issue of whether the constitution of the Arbitral Tribunal should be revisited. In this respect, the sole arbitrator and the Chambers would be well advised to let sleeping dogs lie and to avoid creating confusion with well intentioned but perhaps misguided initiatives of their own.



### 4.3 What is the impact, if any, of a decrease of the amount in dispute intervening in the course of proceedings conducted under the "ordinary" procedure?

The reverse question is whether an arbitration in which the amounts in dispute initially exceeded CHF 1,000,000 should be submitted to the provisions on the Expedited Procedure if the total of the claims and counterclaims subsequently passes under the CHF 1,000,000 threshold, for instance if certain claims are withdrawn or reassessed.

It is submitted that the answer to this question is no if the Arbitral Tribunal has already been constituted (if the decrease comes at an earlier stage of the proceedings, the Chambers would still have time to consider whether to apply Article 42(2)). One should not lose sight of the fact that the Expedited Procedure aims at simplifying the arbitral proceedings. Attempting to transform pending proceedings, in which the Tribunal has been constituted, into an expedited arbitration would likely complicate matters instead of simplifying them and thus foster delay instead of expeditiousness. This would be particularly true if the provisional timetable of Article 15(3) has already been issued.

For this reason, the author considers that this situation is fundamentally different from the case in which an arbitration that was initially conducted under the Expedited Procedure is subsequently changed into an "ordinary" proceeding due to an increase in the amount in dispute resulting from new and more complicated factual circumstances (see Section 4.2 above).

As for the possible consequences that a decrease in the amount in dispute could have on the costs, there is no need to even contemplate the application by analogy of Article 42(2)(c) where the case is referred to a three-member Tribunal, since Article 25 of the Swiss Rules enables the Arbitral Tribunal to address this issue. In addition, if the amount in dispute decreases because certain claims are withdrawn (either unilaterally or as a result of partial settlement), this will often also result in less work for the arbitrators. In such cases, the provisions of Article 39(1) relating to discontinuation of the proceedings could conceivably apply to those claims that were withdrawn.

### 4.4 What if the award is rendered after expiry of the six-month deadline from transmission of the file to the Tribunal?

Before attempting to answer this question, it should be emphasized that it is rather unlikely in practice that the time limit set out at Article 42(1)(d) of the Swiss Rules will be missed. In past experiences, the arbitral institutions were especially attentive when the proceedings were conducted in an expedited form, precisely in order to assist the parties and the Tribunal to meet the six-month deadline. Even if neither the parties nor the Tribunal requested an extension, the institutions routinely enquired as to the status of the case sufficiently in advance, to remind arbitrators of their duty to complete the proceedings within the prescribed

deadline and, if necessary, to be able to deal with requests for extensions before the last minute. There have never been any cases in which the award was rendered after the deadline had expired.

Under the Swiss Rules, this practice will continue. Indeed, one of the tasks of the Arbitration Committee is to monitor the arbitration proceedings (see paragraph (e) of the Introduction to the Rules) and this includes ensuring that the time limit of Article 42(1)(d) is observed.

That being said, no verification and compliance system is perfect. For instance, a sole arbitrator may promise to render the award and still miss the deadline, whether for reasons beyond his or her control or for other reasons. In such cases, what is the legal situation? In particular, would this open the award to setting aside proceedings?

Pursuant to Article 1(2) of the Swiss Rules, the seat of arbitrations conducted under those Rules is in Switzerland. Therefore, Chapter 12 of the PILA is applicable, in particular with respect to grounds for setting aside awards. Article 190(2)(b) of the PILA provides that the award can be challenged for lack of jurisdiction.

Under certain legal systems, a deadline for rendering awards defines the duration of the arbitrators' mandate ("*reference*" or "*mission*") and an award rendered after this mandate has expired can be challenged on the ground that the Tribunal no longer had jurisdiction.[23] Whether this principle would apply in Switzerland is extremely doubtful. The author has no knowledge of any Swiss decision vacating an award on this ground, whether under the PILA or under the Intercantonal Treaty on Arbitration ("*Concordat intercantonal sur l'arbitrage*" or "CIA"; which applied to all arbitrations in Switzerland prior to the entry into force of the PILA and which continues to govern domestic arbitration).

On the contrary, a decision rendered in 1984 by the Court of Appeal of Basel-City states explicitly that the arbitrators' mission does not end merely because the deadline for the rendering of the award under the ICC Rules had expired before the award was issued.[24] According to this decision, the remedy in such cases resides in the power of the International Court of Arbitration to revoke arbitrators who do not discharge their duties properly and within prescribed time limits.[25] Although rendered under the CIA and an earlier version of the ICC Rules, it is submitted that the underlying principle of this decision remains valid today.

23 See the examples given by POUDRET/BESSON, *op. cit.*, pp. 309-403. For a discussion of awards rendered after the time limit has expired in connection with the expedited procedure under the Arbitration Rules of the Geneva Chamber of Commerce and Industry, see P.-Y. TSCHANZ, *The Chamber of Commerce and Industry of Geneva's Arbitration Rules and their Expedited Procedure*, in: Journal of International Arbitration 1993, 4th volume, pp. 51-57, at pp. 54-55 (it must be emphasized that the Geneva rules did not provide for a specific possibility of extending the six-month time limit for rendering the award under the expedited procedure, but only a general provision on the extension of deadlines set by the rules).

24 Decision of the Court of Appeal of Basel-City of 2 January 1984, *K. KG v. M. SA and M. G.*, ASA Bulletin 1985, pp. 19 *et seq.*, at pp. 24–25.

25 In that connection, it should be noted that Article 12 of the Swiss Rules also enables the Chambers to revoke arbitrators who fail to perform their functions despite a written warning.



First, the 1984 decision related to the interpretation of Article 36(g) of the CIA, which provides that the award may be set aside if it is rendered after the mission of the Arbitral Tribunal has expired. This ground for setting aside was *not* adopted in Article 190(2) of the PILA, so that there is considerable doubt whether the Swiss Federal Tribunal would even accept to entertain a motion for setting aside based on the expiry of the Arbitral Tribunal's mandate in "international" cases (to which the Swiss Rules relate exclusively).[26]

Second, even if one were to accept that the end of the Tribunal's mission extinguishes that Tribunal's jurisdiction,[27] so that this could be an admissible ground for setting aside the award under Article 190(2)(b) of the PILA, it still remains to be determined whether the expiry of the time limit to render the award actually ends the Tribunal's mission. This is precisely the question that the 1984 decision cited above resolved in the negative; the fact that the time limit was extendable under the ICC Rules was considered to be decisive in this respect. Extensions are also possible under the Swiss Rules in accordance with Article 42(1)(d).

The expiry of the time limit to render the award would only end the Arbitral Tribunal's mission if the parties' intent was to limit the validity of their arbitration agreement for a certain duration; in other words, if the validity of the arbitral clause was intended to lapse with the deadline for the rendering of the award.[28] This would be the case if provided explicitly in the parties' agreement (certainly not something that the author would recommend). Failing such explicit agreement, a mere reference to the Expedited Procedure of the Swiss Rules would likely not suffice in that respect. For that matter, it was certainly *not* the intent of the drafters of the Swiss Rules that arbitration agreements would lapse simply because the Tribunal missed the deadline for rending the award under Article 42(1)(d), even if the arbitral clause refers explicitly to the Expedited Procedure. This extreme result would defeat the very purpose of Article 42, which was to ensure maximum efficiency and minimum costs.[29]

As for the recognition and enforcement abroad of an award rendered after the expiry of the six-month deadline, this question may be answered differently depending on the jurisdiction where enforcement is being sought. That being said, Article V(1)(a) of the 1958 New York Convention ("NYC") will often lead to the application of Swiss law regarding the validity of the

26 For memory, arbitration is "international" within the meaning of Swiss law if, at the time the arbitration agreement was made, at least one of the parties had neither its domicile (for legal entities, the registered head office) or place of habitual residence in Switzerland; see Article 176(1) of the PILA.

27 On this analogy, see for instance LALIVE/POUDRET/ REYMOND, *op. cit.*, p. 216, N. 4 *ad* Article 36(g) of the CIA.

28 LALIVE/POUDRET/REYMOND, *op. cit.*, p. 99, N. 4 *ad* Article 16 of the CIA. There are precedents in Swiss case law under which an award was set aside for lack of jurisdiction on the ground that the arbitral clause explicitly stated that its validity was subject to time conditions that were not met. For instance, the Swiss Federal Tribunal has held that, if an agreement to arbitrate sets a time limit for a party to initiate the arbitration and if the arbitration was brought after that deadline expires, the arbitral clause lapses and the Tribunal does not have jurisdiction. See decision of the Swiss Federal Tribunal of 17 August 1995, *Transport- en Handelsmaetschappij "Vekoma" B.V. Rotterdam v. Maran Coal Corporation*, ASA Bulletin 1996, pp. 673 *et seq.*

29 A similar comment was made on the expedited procedure under the Arbitration Rules of the Geneva Chamber of Commerce and Industry; see TSCHANZ, *op. cit.*, pp. 54–55.

arbitration agreement, so that the outcome of enforcement proceedings would likely be at least similar to the above.

## 5. Conclusion

There can be little doubt that the adoption of the Expedited Procedure in the Swiss Rules is a significant improvement over the UNCITRAL Rules, upon which the Swiss Rules are based. The Expedited Procedure provides the users of international arbitration with an instrument that will contribute in keeping the arbitral proceedings as short and as cost-efficient as possible. In order to achieve that result, it is important for the parties to select experienced arbitrators and then truly "play by the rules" in the course of the proceedings.

Moreover, the adoption of "fast track" procedures is far from being just another catchy gimmick in international arbitration. In more and more specialized fields, in particular sports arbitrations and arbitrations relating to IP/IT matters, the past decade has witnessed a significant trend in favor of streamlined arbitral processes subjected to short time limits. The CAS *ad hoc* Division procedures during Olympic Games and the WIPO domain name dispute resolution arbitrations are excellent illustrations. There is no reason why this tendency should not extend increasingly to other areas.

Obviously, the Expedited Procedure of the Swiss Rules will not be suitable for each individual contract or for every field of international trade. However, international commercial arbitration must remain attuned to the desire that its users voice regularly for simple and efficient dispute resolution methods. By providing for the Expedited Procedure, the Swiss Rules have done precisely that.