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## 26th UIA Mediation Forum: Developments in Switzerland ([http://www.businessconflictmanagement.com /blog/2019/03/26th-uia- mediation-forum-developments- in-switzerland/](http://www.businessconflictmanagement.com/blog/2019/03/26th-uia-mediation-forum-developments-in-switzerland/))

*F. Peter Phillips*

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The UIA World Mediation Forum convened its 26<sup>th</sup> meeting in Zurich on March 8-9, 2019. As usual, however interesting the many presentations were, the meeting was especially marked by the opportunity to continue friendships with mediators from around the world, and to forge new relationships.



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Appropriately, the first session set forth the “Swiss Dispute Resolution Landscape.” Forum President Fabienne van der Vleugel moderated a panel of regional leaders. Jean-Christophe Barth is by profession a banker and by inclination Co-President of the Swiss Chamber of Commercial Mediation. The Chamber was established in 1997 and has 230 commercial mediators. He notes that 98% of the Swiss economy are SMEs, and it is a formidable task to introduce them to the relatively unconventional method of amicable dispute resolution. Court rules introduce mediation as an option, but the culturally fragmented nature of Swiss society, as well as the efficiency of business courts, militate against broad up-take of commercial mediation. He proposed that mediation is an “unrecognized value driver” to businesses. Andrea Staubli, President of the Swiss Federation of Mediation Associations (SDM-FSM), described the consolidation of various mediation associations under the common umbrella of the Federation and the institution of quality training protocols. There are now 1,500 mediations among the 22 associations in the Federation. These include commercial, family, construction and other mediation focuses, in various languages and approaches. The Federation accredits and certifies both training courses and individual mediators. Among the metrics she offered were that 70% of mediations settle, and that 80% of mediations extend over 1-5 sessions. Urs Weber-Stecher, a member of the SCAI Arbitration Court, reported on that organization’s efforts in mediation. He reviewed the benefits of the SCAI Rules of International Arbitration, including an arbitration-friendly judicial system (resulting in vacatur in only 7% of appeals). He decried the traditional disconnect among commercial mediators and commercial arbitrators, suggesting that benefits might accrue from more cooperation among these professional communities, including hybrid processes. SCAI reports 70-80 arbitrations and 7-10 mediation cases per year. Finally, Roman Manser, President of the Mediation Commission of the Swiss Bar Association (SAV-FSA), explained that mediation – regulated in Germany and Austria – is not centrally regulated in Switzerland, placing on professional associations the responsibility to promulgate rules and competency guidelines. The Swiss Bar Association issues certification to mediators after the completion of certain hours of training.

This year the SCAI releases its new revision of Swiss Rules of Commercial Mediation. SCAI Executive Director and General Counsel Caroline Ming joined attorney Kirstin Dodge of Hamburger AG to explain these new Rules. Revisions were meant to simplify and abbreviate the document itself; to clarify the system of fees owing to the institution and to the mediators; to address to possibility of hybrid (Arb-Med-Arb) processes; to satisfy international demands for certified mediated agreements; and for other

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reasons. The Swiss Rules designate a “seat of mediation,” similar to international arbitration, designating the law that interprets the mediated agreement. Interestingly, the Rules provide for entry of an agreement as an arbitral award, but only if the arbitration commenced prior to arriving at the agreement (in order that the arbitral award issue at the time a controversy is active). The new Rules provide for a simplified procedure for matters involving less than CHF 50,000; certificates of mediation and of settlement agreements; and an advisory council to recommend outcomes of costs disputes or future modifications to the Rules.

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