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F. Peter Phillips

🕒 August 8, 2019

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The Swiss Chambers' Arbitration Institution (<https://www.swissarbitration.org/>) (SCAI) has revised its Rules of Mediation, effective July 1, 2019. The text of the new Rules is available here (<https://www.swissarbitration.org/Mediation/Mediation-rules>). The new Rules revise those that have been in effect since 2007.

Of particular interest are Articles 16 and 17, which provide for the issuance of a “mediation certificate confirming that the mediation took place and stating whether it led to a settlement,” and “a certificate of authenticity of the settlement agreement.” In the case of the latter certificate, the SCAI Secretariat requires either the parties' signature to the settlement agreement at the Secretariat, or written confirmation by the mediator that s/he witnessed the parties signing the agreement.

These provisions satisfy the requirements of Article IV of the newly executed Singapore Convention (https://www.uncitral.org/pdf/english/commissionsessions/51st-session/Annex_I.pdf), and are the first institutional Rules to do so, as far as I can tell.

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Other provisions of interest in the new SCAI Mediation Rules include the designation of a “seat of mediation” in Article 14 — a concept that I do not immediately grasp — and the empowerment of an arbitrator, in proceedings pending before the SCAI, to “suggest that the parties seek to amicably resolve the dispute, or any part of it, by recourse to mediation,” in Article 19. This second provision is oddly placed in the Mediation Rules, since it refers to the powers of an arbitrator. It also is distinctly precatory, in contrast to AAA Commercial Arbitration Rule R-9, which *requires* parties to AAA arbitrations to mediate the matter concurrently with the arbitration, unless one or both parties formally opts not to do so.



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