



Amending prayers for relief during
the proceedings:
What is possible and what is not?

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- > What constitutes an amendment?
- > Until when in the proceedings can a claim be amended?
- > What are the jurisdictional requirements for an amendment of a claim?
- > What are the consequences of an amendment of a claim?
- > The withdrawal of a claim

What constitutes an amendment? (1/2)

Not an amendment:

- > Clarification of the wording of a prayer;
- > Correction of obvious (clerical) errors;
- > Adjusting the amount claimed because of a revised damages calculation or supplementing or changing the quantum theory on which a claim is based;
- > Submission of new factual allegations, evidence, or legal arguments in relation to the subject matter of the dispute; or
- > Change of factual circumstances in the course of the arbitration.

What constitutes an amendment? (2/2)

Not clear whether an amendment:

- > Change of legal qualification of a claim;
- > Quantification of a previously unquantified claim;
- > Adding a claim for interest to a payment claim;
- > Change in currency;
- > New set-off claims; or
- > Waiver of a main prayer for relief in favor of an alternative one.

> Article 20(1) Swiss Rules:

“During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it, the prejudice to the other parties, or any other circumstances. [...]”

> Article 23(4) ICC Rules:

“After the Terms of Reference have been signed or approved by the Court, no party shall make new claims which fall outside the limits of the Terms of Reference unless it has been authorized to do so by the arbitral tribunal, which shall consider the nature of such new claims, the stage of the arbitration and other relevant circumstances.”

> Article 20(1) Swiss Rules:

“[...] However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.”

Short-term consequences:

- > Adjustment of the advance on costs;
- > Conduct of the proceedings.

Long-term consequences:

- > Allocation of costs.

> Section 39.2 DIS Rules:

“The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when

(1) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute.

[...]”