



The Arbitration Review of the Americas

2018

CAM-CCBC

The Arbitration Review of the Americas

2018

Global Arbitration Review is delighted to publish *The Arbitration Review of the Americas 2018*, one of a series of special reports that deliver business-focus intelligence and analysis designed to help general counsel, arbitrators and private practitioners to avoid the pitfalls and seize the opportunities of international arbitration. Like its sister reports *The European Arbitration Review*, *The Middle Eastern and African* and *The Asia-Pacific Arbitration Review* provides an unparalleled annual update – written by the experts – on key developments.

In preparing this report, Global Arbitration Review has worked exclusively with leading arbitrators and legal counsel. It is their wealth of experience and knowledge – enabling them not only to explain law and policy, but also to put theory into context – which makes the report of particular value to those conducting international business in the Americas today.

Global Arbitration Review would like to thank our contributors, who have made it possible to publish this timely regional report.

Although every effort has been made to provide insight into the current state of domestic and international arbitration across the Americas, international arbitration is a complex and fastchanging field of practice, and therefore specific legal advice should always be sought.

Subscribers to Global Arbitration Review will receive regular updates on changes to law and practice throughout the year.

Generated: February 8, 2024

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. Copyright 2006 - 2024 Law Business Research

CAM-CCBC

Carlos Suplicy de Figueiredo Forbes, Patrícia Shiguemi Kobayashi and Louise Antunes Gonçalves

CAM-CCBC (Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada)

Summary

BEST PRACTICES IN CASE MANAGEMENT

THIRD-PARTY FUNDING

ORGANISATION OF COSTS OF ARBITRATION IN THE EVENT OF EARLY TERMINATION

REPLACEMENT OF ARBITRATOR DURING THE ARBITRATION

CAM-CCBC ADMINISTRATIVE RESOLUTION NO. 22/2016 - REPLACEMENT OF ARBITRATOR DURING THE ARBITRATION

MEDIATION RULES

PROMOTING ARBITRATION

PAN-AMERICAN CONGRESS

THE WILLEM C. VIS INTERNATIONAL COMMERCIAL ARBITRATION MOOT

THE CAM-CCBC PRE-MOOT

FINAL REMARKS

It has been almost 40 years since the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CAM-CCBC) was founded in one of the most important financial and largest business centres in Latin America, the city of São Paulo, Brazil.

As the first Brazilian arbitral institution, the Center participated actively in the development of arbitration in Brazil. After the enactment of the Arbitration Act in 1996,¹ based on the UNCITRAL Model Law, and the adoption of the New York Convention, ratified through a presidential decree on 23 July 2002,² Brazil has a modern Arbitration Act which enabled national arbitration to be in line with international standards.

In this favourable scenario, it is easy to comprehend why Brazilian courts have consistently shown a deep understanding and respect for party autonomy and for the best practices in domestic and international arbitration. Those are also the reasons why São Paulo is considered one of the safest seats in Latin America and the wisest choice for arbitration according to relevant arbitrators, lawyers and companies.

This solid experience, combined with an arbitration-friendly environment, has helped the Center to continuously develop and improve the mechanism of administering arbitrations and alternative dispute resolutions (ADRs).

In order to keep evolving and fostering best practices in ADRs, the CAM-CCBC has been continuously improving its internal proceedings and its institutional work.

The unique management formula, certified by the ISO 9001:2015, guarantees the promotion of efficiency and celerity to the arbitral proceedings.

Keeping up with the international standards, the new CAM-CCBC hearing centre has state-of-the-art infrastructure, sound technology and IT, providing the best environment for the development of the proceedings.

Complying with its goal of promoting transparency of its practice, the CAM-CCBC publishes Administrative Resolutions to complement the Rules in order to discipline sensitive issues and to give more effectiveness to the administration services.

The fact that the CAM-CCBC Rules were chosen to be the official rules applicable to the 2017 Willem C. Vis Moot in Vienna, the most traditional and acclaimed international arbitration competition, is a result of the Center's commitment to the improvement of its Rules and to its institutional role of advertising the arbitration through Brazil and abroad.

Besides being a great honour for the CAM-CCBC to have the Rules scrutinised by arbitration students and professionals from all over the world, this was also a part of the Center's internationalisation process, highlighting its relevance in the international market.

The result of this continuous commitment and hard work of the CAM-CCBC with its daily improvement has brought impressive results which can be seen in the Center's statistics.

Since the CAM-CCBC's foundation, the Center has had 795 arbitration proceedings initiated, totalling almost US\$15 billion in dispute.

Nowadays, there are 278 ongoing arbitrations,³ distributed among seven case managers and their respective assistants, with an average duration of 15 months.

The percentage of non-Brazilian parties at CAM-CCBC has also been increasing throughout the years, and in 2017 it reached around 17% of all cases initiated.

The list of arbitrators⁴ had great improvements and increased the number of professionals to 115, reaching the rate of 39% of non-Brazilian arbitrators from several different nationalities, including American, Argentinian, Belgian, British, Chilean, Colombian, Costa Rican, French, German, Greek, Italian, Peruvian, Portuguese, Spanish and Swedish.

This, along with its continuous improvements, can explain why the CAM-CCBC is the leading dispute resolution service provider in Brazil, accounting for over 50% of the Brazilian market for relevant arbitration proceedings.

BEST PRACTICES IN CASE MANAGEMENT

One of the main reasons why the CAM-CCBC is an industry leader in Brazil and Latin America is because of its excellence in every aspect of the administration of arbitral proceedings.

The work developed by the Center is founded upon six major pillars: efficiency, transparency, impartiality, independency, confidentiality and continuous improvements. These principles along with the Secretariat work has set the benchmark for quality secretarial services and established a solid reputation both in Brazil and abroad.

Each of the CAM-CCBC case managers, all certified lawyers with extensive practical and academic experience in arbitration, will closely follow every step in the development of the proceeding, from the filing of the request for arbitration until the arbitral award is rendered.

The case managers will also assist the arbitral tribunal and serve as a direct channel of communication between parties, counsels and arbitrators, always observing the principle of impartiality.

Aiming at the continuous improvement of its procedures, the Secretariat, certified according to the ISO 9001:2015, has been experiencing a transparency movement led by the Board of Directors and Advisory Board in favour of the levels of legitimacy, legal certainty and consistency expected from an arbitral institution.

These initiatives have resulted in Administrative Resolutions concerning third-party funding; costs in the event of early termination; the replacement of arbitrator during the arbitration; and the approval of a new set of mediation rules.

Each and every one of these recommendations, procedures and rules have improved a different aspect of CAM-CCBC's case management formula, promoting the expected efficiency and celerity to the disputes submitted to CAM-CCBC's administration.

THIRD-PARTY FUNDING

CAM-CCBC Administrative Resolution No. 18/2016 - Recommendations Regarding The Existence Of Third-party Funding In Arbitrations

To cope with one of the most recent hot topics in arbitration, the CAM-CCBC issued Resolution No. 18 on 20 July 2016⁵ to inform and guide the parties and arbitrators on how to address the existence of third-party funding in arbitration proceedings administered by the CAM-CCBC, as well as clarifying the procedure to be adopted by the Secretariat.

In this matter, a natural person or a legal entity who is not a party in the arbitral proceeding but assists in the payment of its costs in exchange of a percentage of any benefits obtained with the arbitration award or agreement is, for the purposes of the Administrative Resolution, a third-party funder.

With a view to avoiding any unchecked conflicts of interest with the arbitrators, and aiming at the importance of transparency required, it is highly recommended that the parties inform at the earliest opportunity the existence of a third-party funder, as well as its complete qualification.

With that information in hand, the CAM-CCBC will apprise the other party and notify the arbitrators to check any possible conflicts of interest and reveal any fact that may breed justifiable doubt to his or her independency and impartiality in the arbitral proceeding.

ORGANISATION OF COSTS OF ARBITRATION IN THE EVENT OF EARLY TERMINATION

CAM-CCBC Administrative Resolution Nos. 20/2016 And 21/2016 - Organisation Of Costs Of Arbitration In The Event Of Early Termination

The CAM-CCBC Administrative Resolutions No. 20⁶ and 21⁷ from 10 October 2016 aim to achieve an even greater level of predictability and transparency in the arbitral proceedings due to the organisation of costs in the event of early termination.

Regarding the issues related to the amount due as administration fees in an early termination scenario, the Administrative Resolution No. 20 relates the procedural moment of the arbitration with the percentage due by the parties.

For instance, if the termination of an arbitral proceeding took place after the signature of the Terms of Reference but before the closing of the evidentiary hearing, the percentage due by the parties is 80%.

It is important to emphasise that once the term of 24 months has elapsed from the submission of the request for arbitration, the full amount of the administration fees is due by the parties to the CAM-CCBC.

As per the arbitrator's fees, Administrative Resolution No. 21 also set forth the parameters that will be adopted, in accordance with the procedural moment of the arbitration.

Pursuant to the Resolution, the arbitrators will be consulted and they may present their considerations to the CAM-CCBC in order to adapt the proportions described in the resolution. The CAM-CCBC Board will analyse the arbitrator's weightings, considering the complexity of the case, decisions rendered in the arbitration, the report of hours spent by the arbitrators, among others.

For instance, in case of settlement with the request of a consent award after the end of the evidentiary hearing, the percentage due by the parties can reach until 100% of the full amount of the arbitrator's fees.

REPLACEMENT OF ARBITRATOR DURING THE ARBITRATION

CAM-CCBC ADMINISTRATIVE RESOLUTION NO. 22/2016 - REPLACEMENT OF ARBITRATOR DURING THE ARBITRATION

On 10 October 2016, the CAM-CCBC issued Administrative Resolution No. 22/2016⁸ to regulate the situations in which it is necessary to replace an arbitrator during the arbitral proceeding, in case of resignation, death or disability.

Following the provisions on early termination of the arbitration, the Administrative Resolution relates the time of the procedure to the percentage of the arbitrator's fees due by the parties.

In the case of replacement due to removal resulting from the successful challenge of the arbitrator based on the unforeseen fact attributable to the arbitrator, the president of the CAM-CCBC may request the restitution of the fees to the removed arbitrator.

In any case, the arbitrator will be consulted and may present his or her considerations to the CAM-CCBC in order to adapt the proportions described in the resolution.

MEDIATION RULES

CAM-CCBC Administrative Resolution No. 19/2016 And 24/2016 - Mediation Rules And Creation Of The CAM-CCBC Mediation Advisory Board

The CAM-CCBC has a fundamental role in the development of arbitration in Brazil and is also a consolidated centre for arbitration in Brazil. However, in addition to this role, the Center is committed with other alternatives disputes resolution methods.

When the Brazilian Mediation Act⁹ came into force in 2016,¹⁰ the CAM-CCBC issued Administrative Resolution No. 19,¹¹ dated 1 August of the same year, to approve the CAM-CCBC Mediation Rules, in lieu of the Mediation guide, which led the number of mediation proceedings submitted to CAM-CCBC to increase significantly.

On 8 March 2017, the CAM-CCBC Mediation Advisory Board was created. The new Advisory Board's purpose is to suggest measures and policies to strengthen the prestige of CAM-CCBC and the good quality of the services provided in the administration of Mediations, as provided in the Administrative Resolution No. 24.¹¹

The fact that the CAM-CCBC is constantly improving the development of ADRs explains why it is the leader service provider in Brazil and the Brazilian institution with the greatest projection abroad.

PROMOTING ARBITRATION

The CAM-CCBC is aware of the importance of its institutional role to promote the development of arbitration and accomplishes it with excellence, celebrating cooperation agreements with peer institutions, granting scholarships to law students, lawyers and practitioners, promoting internships for foreign students, granting sponsorships, supporting academic initiatives and promoting academic events.

To boost its internationalisation process, the CAM-CCBC entered into several cooperation agreements with distinct arbitral institutions worldwide, such as: the Permanent Court of Arbitration in the Hague; the Hamburg Arbitration Circle; the Chamber of Arbitration in Milan in Italy; the CAM-Santiago in Chile; the Brussels Enterprise Commerce and Industry in Belgium; the Hong Kong International Arbitration Center; the Cairo Regional Center for International Commercial Arbitration in Egypt; the German Institute of Arbitration; the International Center for Dispute Resolution in the United States, among others.

The purpose of these agreements is to reinforce the relations between the leading institutions in different countries by promoting the exchange of experiences and practices in the field of alternative dispute resolution in different jurisdictions.

The CAM-CCBC also regularly grants scholarships to law students and practitioners in universities such as the Washington College of Law and the University of Miami School of Law, as well as organisations such as the Max-Planck Institute for Comparative and International Private Law in Germany and the Société de Legislation Comparée.

As an example of the Center's efforts, an opportunity has been provided for foreign law students to join the Secretariat, an initiative that has proven to be most efficient for the exchange of knowledge and the promotion of a multicultural environment. In 2017, the CAM-CCBC welcomed a student from the Washington College of Law.

As a non-profit organisation, the CAM-CCBC also provides financial aid to law students and numerous sponsorships to arbitration and mediation events such as the International Council for Commercial Arbitration Congress, the Brazilian Arbitration Committee Congress, the Consensual Dispute Resolution Competition (IBA-VIAC Mediation and Negotiation Competition) as well as the Willem C. Vis Moot International Commercial Arbitration Moot.

In 2016-2017, the following initiatives deserve to be highlighted.

PAN-AMERICAN CONGRESS

One of the most renowned events organised by the CAM-CCBC, the Pan-American Arbitration Congress, already in its 4th edition, is organised annually in cooperation with relevant institutions. In 2016, the Pan-American Congress was organised in association with the International Center for Dispute Resolution (ICDR), the international branch of the American Arbitration Association (AAA).

The congress is traditionally held in São Paulo, with a two-day program of high-level debates on the challenges faced in arbitration. Led by some of the most recognised international arbitration specialists, the Pan-American Congress discusses 'Arbitration practice today and tomorrow'.

It is an opportunity for practitioners from the private and public sectors to successfully discuss arbitration facing the challenges from the proceedings administered by the CAM-CCBC, in line with the institution's transparency and efficiency policy.

THE WILLEM C. VIS INTERNATIONAL COMMERCIAL ARBITRATION MOOT

As already mentioned, the CAM-CCBC has a key role in the development of arbitration and ADRs. The encouragement of academic activities, like the participation at national and international moot competitions, is a great opportunity for law students to improve their knowledge and have their first experience with international arbitration.

Among the international competitions, the biggest and most important is the Willem C. Vis International Commercial Arbitration Moot. The goal of the Vis Moot is to promote the development of international commercial law and arbitration for the resolution of international commercial disputes through its application to an unsolvable problem of a client and to nurture law leaders of tomorrow in ADR.

The association between CAM-CCBC and the Willem C. Vis International Commercial Arbitration Moot is almost eight years old. The Center has always been the main supporter of the competition in Brazil, sponsoring Brazilian universities teams, organising pre-moots and hosting moot-related events.

The Willem C. Vis Moot has reached its 24th edition in Vienna, with the participation of 343 law schools from 76 countries. The Vis East Moot had its 14th edition in Hong Kong in 2017, with more than 100 law schools.

This edition was particularly special because the CAM-CCBC Arbitration Rules were chosen to be the official rules applicable. It was the first time in the history of the competition that

the rules of a South American arbitration centre were used, recognising the importance of the CAM-CCBC in the international scenario.

The CAM-CCBC representatives participated in both competitions. In the Vis East Moot, the secretary general of the CAM-CCBC, Eleonora Coelho, participated in the final panel, and in the Vienna edition the president of the CAM-CCBC Carlos Forbes featured as an arbitrator in the final panel.

The CAM-CCBC embraces and considers extremely important its role in providing academic incentives for future lawyers to act in arbitration, spreading the knowledge and promoting the development of ADRs in Brazil and abroad.

THE CAM-CCBC PRE-MOOT

The Pre-Moots are essential for the law students because they provide them with the opportunity to test their arguments and oral advocacy skills in front of expert arbitrators from all around the world. This first contact is extremely helpful not only to improve their arguments and speeches, but also to have a sense of how it will be in the main competition.

In that sense, the CAM-CCBC has been organising its own Pre-Moot since the 17th edition of the Vis Moot. In 2017, the Pre-Moot hit the mark of 30 teams, including representatives from Latin America, North America and Europe.

The teams were awarded with financial support for their participation in the competition, with special prizes for the best ranked teams.

Since 2014, the CAM-CCBC has also organised the Moot Marathon (MaMoot) with the Association for the Moot of the University of São Paulo (MUTUSP) and the Brazilian Association of Arbitration Students (ABEArb). The marathon consists in the discussion of the relevant issues of the case (jurisdiction and merits) by scholars, practitioners and arbitrators shortly after the problem is released.

Also in 2017, the CAM-CCBC organised a special Pre-Moot in Hamburg, Germany, in cooperation with the Hamburg Arbitration Circle. Practitioners also had the opportunity to share their experience with CAM-CCBC Arbitration Rules and related issues during the opening of the Hanseatic Pre-Moot, at the Bucerius Law School, for the Hamburg International Arbitration Day.

FINAL REMARKS

The CAM-CCBC is constantly challenging itself to raise its standards in case management, providing an ever more efficient service and promoting arbitration as a viable dispute resolution mechanism.

The new Arbitration Rules in force since 2012 are aligned with the most internationally recognised arbitration rules and are one of the most important key element to the Center's success. Besides that, the CAM-CCBC Rules are available in three languages: English, Spanish and Portuguese.

They are guided mainly by the principle of party autonomy and seek to inject a considerable degree of flexibility in the arbitral proceedings. Under the new Rules, parties are free to modify the standard procedure to a considerable extent provided the administrative work of the Center is not affected.

In 2017, the CAM-CCBC also added 11 arbitrators to the list, 40% of whom are women, and 50% of whom are non-Brazilians.

Furthermore, the president of the CAM-CCBC along with the Advisory Board approved a new table of expenses, in force as of January 2017, to outline and detail the CAM-CCBC practices, bringing more clarity on the arbitration costs and providing financial predictability to the parties.

Therefore, the CAM-CCBC's work goes far beyond the delivery of cutting-edge services in the administration of arbitral proceedings. The Center is constantly contributing to the development of arbitration in its daily activities and outside of it.

The results of the Center's endeavours are: the modernisation of the hearing centre; the issuance of the Administrative Resolutions mentioned; the ISO 9001:2015 certification; the cooperation's agreements; the incitement to academic initiatives; and the use of the CAM-CCBC rules in the most traditional and renowned international arbitration competitions.

This hard work, along with the serious commitment to its role in the administrative, institutional and international fields, guaranteed the CAM-CCBC the leadership among the arbitral institutions in Latin America.

Aware of its unequalled position towards the Brazilian arbitral community, the CAM-CCBC is prepared to tackle future challenges with the best and most reliable structure for increasing the internationalisation of its services, and will continue to support and disseminate arbitration and ADRs, and continue with its projects, improvements and incentives in Brazil and abroad.

Notes

1. Law Nr. 9.307, 23 September 1996.
2. Decree Nr. 4.311, 23 July 2002.
3. Survey updated on 19 June 2017.
4. Available on our website:
<http://www.ccbc.org.br/BuscaSocio?AssociadoCategoriald=2>.
5. See the Resolution on our website:
<http://www.ccbc.org.br/Materia/2890/resolucao-administrativa-182016>.
6. See the Resolution on our website:
<http://www.ccbc.org.br/Materia/2971/resolucao-administrativa-n%C2%B0-202016>.
7. See the Resolution on our website:
<http://www.ccbc.org.br/Materia/2972/resolucao-administrativa-n%C2%B0-212016>.
8. See the Resolution on our website:
<http://www.ccbc.org.br/Materia/2973/resolucao-administrativa-n%C2%B0-222016>.
9. Law Nr 13.129, of 26 May 2015.
10. See the Resolution on our website:
<http://www.ccbc.org.br/Materia/2954/resolucao-administrativa-192016>.
11. See the Resolution on our website:
<http://www.ccbc.org.br/Noticias/6266/resolucao-administrativa-n%C2%BA-242017>.



Carlos Suplicy de Figueiredo Forbes

Patrícia Shiguemi Kobayashi

Louise Antunes Gonçalves

csf@mundie.com.br

patricia.kobayashi@ccbc.org.br

louise.goncalves@ccbc.org.br

Rua do Rocio No. 220, 12th Floor, São Paulo 04552-000, Brazil

Tel: +55 11 4058 0400

<http://www.ccbc.org.br/>

Read more from this firm on GAR