



The Arbitration Review of the Americas

2023

**JAMS: overview of revised JAMS
International Arbitration Rules, focus
on D&I**

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The Arbitration Review of the Americas 2023 contains insight and thought leadership from 38 pre-eminent practitioners from the region. It provides an invaluable retrospective on what has been happening in some of Latin America's more interesting seats. This edition also contains an interesting think piece on concurrent delay as well as an excellent pair of reviews of decisions in the US and Canadian courts.

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JAMS: overview of revised JAMS International Arbitration Rules, focus on D&I

Robert B Davidson and **Niki Borofsky**

JAMS

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Discussion points

- International arbitral procedure before JAMS
 - Commentary on certain features of the JIAR
 - JAMS and the hybrid practice of the future
 - JAMS International Arbitration Center
 - Diversity, equity and inclusion in international arbitration
 - JAMS's commitment to the community and ADR development
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- JAMS International Arbitration Rules
- ArbitralWomen
- Equal Representation in Arbitration Pledge
- California Senate Bill 766
- UNCITRAL Model Law – New York Convention
- ICCA-NYC Bar – CPR Cybersecurity Protocol
- Seoul Protocol on Videoconference
- ICC Discussion Paper on the Safe Handling of Data

Introduction

It would be impossible to provide an update without commenting on the impact that the covid-19 pandemic has had on traditional ways of working, both challenging and revolutionising them. The impact has also extended to methods of resolving commercial disputes. Few could imagine that what we described in the previous edition in 2020 would continue into 2021.

Several themes emerged as a result of the disruption, such as opportunities to re-evaluate the norms of commercial arbitration proceedings and the benefit of using currently available technology.

Another theme that emerged was 'giving back' to the community and supporting others. While individuals suffered challenges and adversity, there were still opportunities to help others and champion various alternative dispute resolution (ADR) processes to prevent, manage and resolve disputes.

This article will provide a summary of the recently revised JAMS International Arbitration Rules (JIAR) and will expand on some of the initiatives that JAMS has instituted to support its international practice.

International arbitral procedure before JAMS

Model international clause

The JAMS standard arbitration clause for international commercial contracts is as follows:

Any dispute, controversy or claim arising out of or relating to this contract, including the formation, interpretation, breach or termination thereof, including whether the claims asserted are arbitrable, will be referred to and finally determined by arbitration in accordance with the JAMS International Arbitration Rules. The tribunal will consist of [three arbitrators][a sole arbitrator]. The seat of the arbitration will be [location]. The language to be used in the arbitral proceedings will be [language]. Judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.

The JIAR were revised and became effective on 1 June 2021. The revised rules (article 2.2) recognised the development of electronic systems for case management and other processes and streamlined the filing of requests for arbitration and other pleadings and submissions.

Commentary on certain features of the JIAR

Provisions on confidentiality of arbitration

The JIAR, were substantially revised and republished effective as of 1 June 2021. The revised Rules address the confidentiality of arbitration, expressly providing that the parties, and the tribunal and the administrator 'will maintain the confidentiality of the arbitration' (16.1). JIAR article 16.2 also provides that the arbitration award, unless otherwise required by law, 'will remain confidential unless all the parties consent to its publication'.

Availability of expedited procedures

Article 21 of the JIAR provides an optional expedited arbitration procedure for cases involving less than US\$5 million in which parties can choose a process that limits disclosure. Any party may include a request for the procedure in its arbitration agreement (article 21.1 of the JIAR).

If the request is opposed, JAMS will determine whether the arbitration will be conducted on an expedited basis. Arbitrations conducted under the expedited procedures should take six months to complete.

Emergency relief

Article 3 of the JIAR provides for emergency relief procedures. A party in need of emergency relief prior to the appointment of a tribunal may notify JAMS and the parties in writing of the relief sought and the basis for an award of such relief. JAMS will appoint an emergency arbitrator to rule on the emergency request. In most cases, that appointment will occur within 24 hours of receipt of the emergency application and any requested advance.

Within two business days, or as soon as practicable thereafter, the emergency arbitrator will establish a schedule to consider the request for emergency relief, affording all parties an opportunity to be heard (by remote means if necessary). The emergency arbitrator will determine whether the party seeking emergency relief has shown that immediate loss or damage will result in the absence of emergency relief and whether the requesting party is entitled to the relief. The emergency arbitrator will then issue a reasoned order or award granting or denying the relief. Any order or award of an emergency arbitrator can be revisited and revised, if deemed appropriate, by the tribunal once appointed.

Interim measures of protection

Article 31 of the JIAR is new. The old Rules authorised a tribunal to grant interim relief, but the revised Rules changed the showing required to obtain such relief. Article 31.2 now aligns with the UNCITRAL standard. It provides that interim relief may be ordered if the requesting party demonstrates, first that a requesting party that 'harm not adequately reparable by an Award of damages is likely to result if the measure is not ordered and such harm substantially outweighs the harm that is likely to result to the Party against whom the measure is directed if the measure is granted;' and, second, that 'there is a reasonable possibility that the requesting Party will succeed on the merits of the claim.'

This is a major change. The prerequisites for interim measures now do not now require a showing of either irreparable harm or likelihood of success on the merits.

The tribunal also has the power to require security for any costs that might be incurred if it is subsequently determined that the moving party was not entitled to the interim relief.

Consolidation of disputes between the same parties and joinder of third parties

Article 6 of the JIAR provides for consolidation of disputes and joinder of third parties. Article 6.1 invests JAMS (through its JAMS International Arbitration Committee) with the discretion to decide, 'after consulting with the parties to all proceedings and with the arbitrators, that the new case will be referred to the Tribunal already constituted for the existing proceedings'.

The article requires JAMS to 'take into account all circumstances, including the links between the two cases and the progress already made in the existing proceedings'.

Additionally, article 6.2 of the provides for disputes arising out of or in connection with multiple contracts to be consolidated into a single arbitration. Article 6.3 is invoked if a third party 'seeks to participate in an arbitration already pending', in which case the tribunal (not JAMS) must 'decide on such request, after consulting with all the parties, taking into account all circumstances it deems relevant and applicable'.

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Article 33.1 of the JIAR provides that 'in most circumstances, the dispute should be heard and submitted to the Tribunal for decision within nine months after the initial preliminary conference'. Further, in promoting speed and efficiency, the final award should be rendered within three months after the dispute is heard by the tribunal and submitted for decision. JAMS will scrutinise all awards before issuance.

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Under article 36.4, the tribunal is required to 'fix the arbitration costs in its award'. Importantly, under that same article, the tribunal 'may' apportion costs 'among the parties' if the tribunal 'determines that such apportionment is reasonable, taking into account the circumstances of the case'.

Appellate procedures

JAMS's optional arbitration appeal procedure applies only upon express party agreement. Selection of the appellate arbitrators is left to the parties, but if they fail to reach agreement, the assigned case manager is authorised to make the appointments.

The usual deferential appellate standard applied under the Convention is not applicable. Instead, the appellate panel is mandated to apply 'the same standard of review that the first-level appellate court in the jurisdiction would apply to an appeal from the trial court decision'.

Remote hearings

Remote hearings are now authorised even over the objection of a party. Hearings may take place at any location, and the tribunal, at its discretion, may require that hearings be conducted by means that permit the participants to be located in different geographical locations.

Arbitrators

JAMS panellists include some of the most distinguished retired judges and attorneys in the United States and Europe. In addition, most JAMS panellists are full-time mediators and arbitrators, which allows for the avoidance of conflicts and ease of scheduling cases. Information about JAMS arbitrators and mediators, including detailed CVs, can be found at www.jamsadr.com.

The appointment of arbitrators is governed by article 7, which, similarly to the International Chamber of Commerce, calls for party appointments. Appointed arbitrators need not be affiliated with JAMS. (Consistent with international standards, all arbitrators are required to be impartial and independent.)

If the parties have not agreed on the number of arbitrators, one arbitrator will be appointed, unless JAMS determines in its discretion that three arbitrators are appropriate because of the size, complexity or other circumstances of the case.

If the parties have agreed on a procedure for appointing the arbitrators, that procedure will be followed. If the parties have not agreed, then JAMS will follow a list procedure.

Costs, fees and other service charges

JAMS arbitrators set their own hourly or daily rate. Fees range from US\$400 to US\$1,400 per hour, depending on the arbitrator selected.

For matters administered under the JIAR, JAMS charges a US\$1,750 filing fee payable by the initiating party and 13 per cent of professional fees thereafter for administrative services.

JAMS does not charge fees on an ad valorem basis; instead, fees are billed as the case progresses and are, therefore, directly proportional to the amount of professional time devoted to the matter. Professional fees include time spent for hearings, pre- and post-hearing reading and research and award preparation. Administrative fees include:

- dedicated services, including billing and all other administrative services throughout the duration of the case;
- document handling;
- on-site business support available at any JAMS office, including local phone service, internet access and fax and copying capabilities; and
- on-demand tech support from JAMS virtual front desk, including a JAMS virtual moderator to assist throughout the process.

JAMS reserves the right to adjust this cap for extraordinary cases, after consultation with the parties.

For hearings scheduled for two days or more that are cancelled or continued 60 days prior to the commencement date, arbitrator fees for the reserved hearing time are non-refundable; however, the cancellation–continuance policy is set by the individual arbitrators and, therefore, may vary. This is because time reserved and later cancelled generally cannot be replaced.

In all cases involving non-refundable time, the party causing the continuance or cancellation is responsible for the cancellation charges.

JAMS will invoice for the fees of all arbitrators, regardless of whether the arbitrator is affiliated with JAMS. Receipt of payment for all fees is required prior to the delivery of an arbitration award. JAMS reserves the right to cancel a hearing if fees are not paid by all parties by the applicable cancellation date.

JAMS International Arbitration Centers

As the result of the appointment of many of its neutrals under JIAR and the rules of other institutions (ICC, ICDR, SIAC, LCIA and HKIAC), JAMS has been conducting international arbitration at its major metropolitan city offices for many years.

However, users often demand hearing facilities similar to those offered by other major international arbitration centres. To respond to that, JAMS opened specially designed JAMS International Arbitration Centers in New York, San Francisco and Los Angeles.

Each centre has been equipped with features that include:

- the ability to conduct hearings in-person, hybrid or virtually (with the assistance of moderators and a tech help desk);
- spacious, secure hearing rooms with modular tables for flexible hearing set-ups plus access to as many breakout rooms as required;
- large LCD monitors and high-quality video conferencing for remote participants and witness cross-examination;
- complimentary, high-speed wireless and cable internet;
- translation booths and translation capabilities; and
- arbitrator lounges for tripartite proceedings.

Location of the JAMS International Arbitration Centers

JAMS, in collaboration with local international arbitration practitioners and institutions, saw a special need to promote international arbitration in California. This was in response to the perceived need and the opportunity that Senate Bill 766 (SB766)^[1] would provide, encouraging the practice of international arbitration in California.

Downtown, Los Angeles

An international arbitration centre was built on the 33rd floor of the Gas Works Tower in downtown Los Angeles. This is a separate location from the JAMS Resolution Center, which is located on the 32nd floor of the same building.

JAMS converted a hearing space into an international arbitration centre, and all the features that practitioners expect in international arbitration have been included in the centre.

This location is the business centre of Los Angeles, close to the courts and major law firms. It is conveniently located, with road, rail and metro connections and easy access to the highway, as well as airports and other parts of Southern California.

Century City, Los Angeles

Los Angeles, like many cities, has businesses and, therefore, clients of ADR, situated in different parts of the city; thus, in recognition of the importance of arbitration to the media and entertainment business community, an even larger international arbitration centre was built and opened at the end of 2019 in Century City.

New York City

The New York International Arbitration Center was purpose-built on the 16th floor of the New York Times building in Midtown Manhattan. It is located on a separate floor from the Resolution Center (which has also gone through a complete renovation on the 34th floor).

The 16th-floor hearing facility features all the requisite international arbitration facilities together with hearing rooms, which can accommodate 18 to 25 people. The main hearing room is equipped with translation booths. All rooms have video screens to enable remote hearings or testimony.

The New York International Arbitration Center (NYIAC) has recently collaborated with JAMS to conduct NYIAC hearings at our New York location.

Technology

JAMS resolution centres are able to meet the technical demands of modern practice.

JAMS hearing rooms have conferencing facilities over a password-protected network system using Zoom or one of the other favoured videoconferencing platforms. An IT specialist is available to assist with technical requirements

Each international arbitration centre has at least one large hearing room. The translation booths in each of the hearing facilities comply with ISO 2603/2016^[2] and have all the technical necessities to conduct a bilingual hearing.

Cybersecurity and data protection are ongoing concerns. JAMS follows a series of protocols to ensure the safe handling of data.^[3] Several initiatives have been introduced, including the ICCA-NYC Bar-CPR Cybersecurity Protocol,^[4] the Seoul Protocol^[5] on Video Conference and the ICC Discussion Paper on the Safe Handling of Data.^[6]

JAMS also provides training and education through the JAMS Institute to arbitration practitioners and users on effective data protection measures. The challenge is to ensure that all participants in international arbitration follow those protocols, which is why education and guidance on use are essential in maintaining protection.

JAMS: the institution

Former judge Warren Knight founded JAMS in Southern California in 1979 as a for-profit corporation committed to private resolution of commercial disputes. The company's subsequent national and international expansion now makes it the world's largest private provider of mediation and arbitration services.

JAMS remains headquartered in Irvine, California, and comprises 28 offices in North America and London. The panel includes many retired judges, and it also includes former practising attorneys with substantial ADR experience. JAMS neutrals are supported by approximately 250 full-time associates.

Although JAMS is best known as a market-leading mediation provider, domestic and international arbitration comprises approximately 50 per cent of its annual revenue. Its reputation as a top-tier source of arbitrators owes much to both the vast experience of its panellists and to its ongoing internal training programmes through the JAMS Institute. All JAMS arbitrators, with very few exceptions, are full-time ADR practitioners who no longer practice law – thus assuring strict independence and impartiality. JAMS does not operate through external committees or advisory groups.

JAMS arbitrators sit in both cases administered by JAMS and not administered by JAMS. Many of JAMS's panellists are listed on the panels of other major arbitral institutions. Many are fellows of the Chartered Institute of Arbitrators.

All neutrals are vetted before joining JAMS and are subject to ongoing scrutiny. Party feedback is sought and welcome, both during and after arbitration. With increasing pressure on time and costs in arbitration, JAMS's close relationship with its neutrals offers a degree of oversight and, therefore, comfort to parties – regardless of whether JAMS is administering the case – that the process will be run in an efficient manner and that awards are delivered in a timely fashion.

In partnership with claims administrators and courts, JAMS has also created protocols and administered specialised programmes for handling mass claims arising from class actions, mass arbitrations, mass torts and bankruptcies.

JAMS is, thus, active across the entire spectrum of ADR products and services, as well as along the entire timeline of a dispute, up to and including the allocation of settlement funds in large-scale matters. Examples include the allocation of an US\$80 million settlement to over 13,000 claimants in the Unocal Refinery Litigation; the adjudication of over 35,000 African American Farmers discrimination claims; and compensation and overtime claims in retail industries.

Many JAMS neutrals serve as court-appointed special masters for settlement or discovery in multi-district and other complex US litigation involving pharmaceuticals (eg, Baycol, DES, Fen-Phen and Zyprexa), Agent Orange, employment discrimination and government audits.

JAMS established an office in London and sought to leverage London's status as a leading international dispute resolution destination to oversee complex commercial disputes from around the world. In doing so, it provides the opportunity to work closely with other regional and global arbitral institutions and neutrals outside JAMS's panel.

The launch of JAMS in the United Kingdom was followed by the opening of a resolution centre in Miami, Florida, recognising Miami's importance as an international business community and a gateway to delivering ADR services in the Caribbean and Latin America (CALA) region.

In 2020, JAMS opened a resolution centre in Houston, Texas, further expanding its CALA presence and, with leading neutrals in the field, provides services to the oil, gas and petrochemical industries. JAMS understands the importance of having a culturally sensitive and diverse panel and continues to offer a panel of Latin American experts with Spanish and Portuguese language skills.

Types of disputes handled

JAMS handles multi-party, complex cases in virtually all areas of law. Matters include antitrust and competition law; bankruptcy; business; class action; commercial; construction; construction defects; e-discovery; education; employment; engineering and construction; entertainment and sports; environment; family; finance; franchise; government; healthcare; insurance and reinsurance; intellectual property; landlord and tenant; lender liability; licensing; patents; pharmaceutical disputes; professional malpractice; marital dissolution; mass tort; partnership; personal injury; probate; product liability; public policy; real estate; securities; toxic tort and trusts and estates.

Number of disputes handled

Although the beginning of 2020 was turbulent, by the end of the year JAMS saw positive growth, which has extended into 2021. In 2021, JAMS handled a worldwide caseload of approximately 18,000 disputes, comprising over 7,000 arbitration filings with the remainder being mediation and hybrid processes.

Diversity, equity and inclusion

The role of women and the promotion of diversity and inclusion in arbitration, particularly international arbitration, is something that has received a tremendous amount of attention over the past several years.^[7] International arbitration practice has been criticised for the dominance of a relatively narrow demographic. There have been many initiatives to promote women and diverse panels.

To further support this growth, groups such as Arbitral Women,^[8] the Equal Representation in Arbitration Pledge,^[9] ADR institutions, multinational corporations, bar associations and global law firms have shown a commitment to increasing diverse representation as counsel and neutral.

Diversity initiatives: JAMS's approach

Diversity, equity and inclusion are core values for JAMS, and we consistently track our progress against DEI goals. While acknowledging there remains room for improvement, 42 per cent of senior management are women; 70 per cent of employees are women, and 49 per cent of employees are diverse.^[10] In addition, 32 per cent of JAMS's panel in 2021 were women, which compares favourably with other leading arbitral institutions.

JAMS encourages external stakeholders to endorse and support diversity efforts. Our commitment to diversity is also evidenced by the introduction of a diversity and inclusion rider that can be added to its standard arbitration clause: 'The parties agree that, wherever practicable, they will seek to appoint a fair representation of diverse arbitrators (considering gender, ethnicity and sexual orientation), and will request administering institutions to include a fair representation of diverse candidates on their rosters and list of potential arbitrator appointees.'

Its commitment is also demonstrated by its appointment of a director for diversity outreach, tasked with driving forward multiple initiatives to ensure equal representation across the spectrum both for mediators and arbitrators.

JAMS was shortlisted for *Global Arbitration Review's* 2020 Equal Representation in Arbitration Pledge Award. The Pledge Award recognised leading international arbitral institutions and practitioners for their commitment to improving the profile and representation of women and minorities in arbitration.

In partnership with ArbitralWomen, JAMS has presented a series of seminars^[11] identifying the challenges faced by individuals from diverse backgrounds and the opportunities that the post-covid environment might encourage individuals who are responsible for the appointment of arbitrators to think more flexibly about the composition of an arbitration panel.

JAMS's commitment to the community and ADR development^[12]

JAMS Foundation

Because JAMS is committed to giving back to local, national and international communities, it established the JAMS Foundation in 2002. The Foundation, funded entirely by contributions from JAMS neutrals and associates, provides grants for conflict resolution initiatives and is now the world's largest funder of dispute resolution programmes and initiatives.

The JAMS Foundation has provided more than US\$11 million in grant funding since its inception.

Weinstein International Fellowship

The JAMS Foundation established the Weinstein International Fellowship programme in 2008 to provide opportunities for individuals from outside the United States to visit the United States to learn more about dispute resolution and to pursue a project of their own design that serves to advance the resolution of disputes in their home countries. By 2020, 115 individuals representing 74 countries had participated in the programme.

The Foundation also established the annual Warren Knight Award and provides a US\$25,000 grant to an organisation that promotes dispute prevention and conflict resolution.

JAMS Society

The JAMS Society was created in 2002 to recognise and support volunteer opportunities and community involvement for JAMS associates at a local, 'hands-on' level. All associates are encouraged to become members of their local society and to collaborate on outreach programmes or to work individually on a project of their choice.

JAMS Society members participate in a diverse array of volunteer activities around the country, ranging from cleaning up the environment to improving the lives of children and seniors. The members have elected to make positive changes in their communities by participating in projects such as adopt-a-family programmes, AIDS walks, blood drives, clothing drives, meal deliveries to homebound seniors and other worthwhile endeavours.

Footnotes

[1] SB766 'would permit an individual who is not admitted to practice law in California but who is a member in good standing of a recognized legal profession in the United States or a foreign jurisdiction and is subject to effective regulation and discipline by a duly constituted professional body or public authority to provide legal services in an international commercial arbitration or related proceeding, as specified. Additionally, the bill would subject an individual rendering legal services pursuant to this provision to the disciplinary jurisdiction of the State Bar, and it would direct the State Bar to annually report to the Supreme Court regarding the number and nature of any complaints that it has received against these attorneys and any actions it has taken in response to these complaints.' The full text of SB766 can be found at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=20172_0180SB766.

[2] www.iso.org/standard/67065.html.

[3] For more information please go to www.jamsadr.com/online.

[4] The ICCA-NYC Bar-CPR Protocol on Cybersecurity in International Arbitration can be found at www.arbitration-icca.org/publications/ICCA_Report_N6.html.

[5] Details of the Seoul Protocol can be found at www.kcabinternational.or.kr/user/Board/comm_notice.do?BD_NO=172&CURRENT_MENU_CODE=MENU0015&TOP_MENU_CODE=MENU0014. Additional commentary on the Seoul Protocol and post-COVID practice is available at www.jamsadr.com/blog/2020/the-seoul-protocol-on-videoconferencing-and-the-coronavirus-pandemic.

[6] <https://iccwbo.org/publication/icc-discussion-paper-on-data-protection-principle-of-accountability>.

[7] www.jamsadr.com/events/2020/adr-in-asia-conference-redesigning-international-arbitration.

[8] www.arbitralwomen.org.

[9] www.arbitrationpledge.com.

[10] www.jamsadr.com/diversity.

[11] JAMS 'Diversity in International Arbitration: The Intersection of Race and Gender – building on the future by learning from the past' webinar (9 June 2021); and JAMS, 'Diversity in International Arbitration: Progress in Times of COVID?' webinar (15 December 2020).

[12] www.jamsadr.com/social-responsibility.

IN SUMMARY

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Under article 36.4, the tribunal is required to 'fix the arbitration costs in its award'. Importantly, under that same article, the tribunal 'may' apportion costs 'among the parties' if the tribunal 'determines that such apportionment is reasonable, taking into account the circumstances of the case'.

Appellate Procedures

JAMS's optional arbitration appeal procedure applies only upon express party agreement. Selection of the appellate arbitrators is left to the parties, but if they fail to reach agreement, the assigned case manager is authorised to make the appointments.

The usual deferential appellate standard applied under the Convention is not applicable. Instead, the appellate panel is mandated to apply 'the same standard of review that the first-level appellate court in the jurisdiction would apply to an appeal from the trial court decision'.

Remote Hearings

Remote hearings are now authorised even over the objection of a party. Hearings may take place at any location, and the tribunal, at its discretion, may require that hearings be conducted by means that permit the participants to be located in different geographical locations.

Arbitrators

JAMS panellists include some of the most distinguished retired judges and attorneys in the United States and Europe. In addition, most JAMS panellists are full-time mediators and arbitrators, which allows for the avoidance of conflicts and ease of scheduling cases. Information about JAMS arbitrators and mediators, including detailed CVs, can be found at www.jamsadr.com.

The appointment of arbitrators is governed by article 7, which, similarly to the International Chamber of Commerce, calls for party appointments. Appointed arbitrators need not be affiliated with JAMS. (Consistent with international standards, all arbitrators are required to be impartial and independent.)

If the parties have not agreed on the number of arbitrators, one arbitrator will be appointed, unless JAMS determines in its discretion that three arbitrators are appropriate because of the size, complexity or other circumstances of the case.

If the parties have agreed on a procedure for appointing the arbitrators, that procedure will be followed. If the parties have not agreed, then JAMS will follow a list procedure.

Costs, Fees And Other Service Charges

JAMS arbitrators set their own hourly or daily rate. Fees range from US\$400 to US\$1,400 per hour, depending on the arbitrator selected.

For matters administered under the JIAR, JAMS charges a US\$1,750 filing fee payable by the initiating party and 13 per cent of professional fees thereafter for administrative services.

JAMS does not charge fees on an ad valorem basis; instead, fees are billed as the case progresses and are, therefore, directly proportional to the amount of professional time devoted to the matter. Professional fees include time spent for hearings, pre- and post-hearing reading and research and award preparation. Administrative fees include:

- dedicated services, including billing and all other administrative services throughout the duration of the case;
- document handling;
- on-site business support available at any JAMS office, including local phone service, internet access and fax and copying capabilities; and
- on-demand tech support from JAMS virtual front desk, including a JAMS virtual moderator to assist throughout the process.

JAMS reserves the right to adjust this cap for extraordinary cases, after consultation with the parties.

For hearings scheduled for two days or more that are cancelled or continued 60 days prior to the commencement date, arbitrator fees for the reserved hearing time are non-refundable; however, the cancellation–continuance policy is set by the individual arbitrators and, therefore, may vary. This is because time reserved and later cancelled generally cannot be replaced.

In all cases involving non-refundable time, the party causing the continuance or cancellation is responsible for the cancellation charges.

JAMS will invoice for the fees of all arbitrators, regardless of whether the arbitrator is affiliated with JAMS. Receipt of payment for all fees is required prior to the delivery of an arbitration award. JAMS reserves the right to cancel a hearing if fees are not paid by all parties by the applicable cancellation date.

JAMS INTERNATIONAL ARBITRATION CENTERS

As the result of the appointment of many of its neutrals under JIAR and the rules of other institutions (ICC, ICDR, SIAC, LCIA and HKIAC), JAMS has been conducting international arbitration at its major metropolitan city offices for many years.

However, users often demand hearing facilities similar to those offered by other major international arbitration centres. To respond to that, JAMS opened specially designed JAMS International Arbitration Centers in New York, San Francisco and Los Angeles.

Each centre has been equipped with features that include:

- the ability to conduct hearings in-person, hybrid or virtually (with the assistance of moderators and a tech help desk);
-

spacious, secure hearing rooms with modular tables for flexible hearing set-ups plus access to as many breakout rooms as required;

- large LCD monitors and high-quality video conferencing for remote participants and witness cross-examination;
- complimentary, high-speed wireless and cable internet;
- translation booths and translation capabilities; and
- arbitrator lounges for tripartite proceedings.

LOCATION OF THE JAMS INTERNATIONAL ARBITRATION CENTERS

JAMS, in collaboration with local international arbitration practitioners and institutions, saw a special need to promote international arbitration in California. This was in response to the perceived need and the opportunity that Senate Bill 766 (SB766)^[1] would provide, encouraging the practice of international arbitration in California.

Downtown, Los Angeles

An international arbitration centre was built on the 33rd floor of the Gas Works Tower in downtown Los Angeles. This is a separate location from the JAMS Resolution Center, which is located on the 32nd floor of the same building.

JAMS converted a hearing space into an international arbitration centre, and all the features that practitioners expect in international arbitration have been included in the centre.

This location is the business centre of Los Angeles, close to the courts and major law firms. It is conveniently located, with road, rail and metro connections and easy access to the highway, as well as airports and other parts of Southern California.

Century City, Los Angeles

Los Angeles, like many cities, has businesses and, therefore, clients of ADR, situated in different parts of the city; thus, in recognition of the importance of arbitration to the media and entertainment business community, an even larger international arbitration centre was built and opened at the end of 2019 in Century City.

New York City

The New York International Arbitration Center was purpose-built on the 16th floor of the New York Times building in Midtown Manhattan. It is located on a separate floor from the Resolution Center (which has also gone through a complete renovation on the 34th floor).

The 16th-floor hearing facility features all the requisite international arbitration facilities together with hearing rooms, which can accommodate 18 to 25 people. The main hearing room is equipped with translation booths. All rooms have video screens to enable remote hearings or testimony.

The New York International Arbitration Center (NYIAC) has recently collaborated with JAMS to conduct NYIAC hearings at our New York location.

TECHNOLOGY

JAMS resolution centres are able to meet the technical demands of modern practice.

JAMS hearing rooms have conferencing facilities over a password-protected network system using Zoom or one of the other favoured videoconferencing platforms. An IT specialist is available to assist with technical requirements

Each international arbitration centre has at least one large hearing room. The translation booths in each of the hearing facilities comply with ISO 2603/2016^[2] and have all the technical necessities to conduct a bilingual hearing.

Cybersecurity and data protection are ongoing concerns. JAMS follows a series of protocols to ensure the safe handling of data.^[3] Several initiatives have been introduced, including the ICCA-NYC Bar-CPR Cybersecurity Protocol,^[4] the Seoul Protocol^[5] on Video Conference and the ICC Discussion Paper on the Safe Handling of Data.^[6]

JAMS also provides training and education through the JAMS Institute to arbitration practitioners and users on effective data protection measures. The challenge is to ensure that all participants in international arbitration follow those protocols, which is why education and guidance on use are essential in maintaining protection.

JAMS: THE INSTITUTION

Former judge Warren Knight founded JAMS in Southern California in 1979 as a for-profit corporation committed to private resolution of commercial disputes. The company's subsequent national and international expansion now makes it the world's largest private provider of mediation and arbitration services.

JAMS remains headquartered in Irvine, California, and comprises 28 offices in North America and London. The panel includes many retired judges, and it also includes former practising attorneys with substantial ADR experience. JAMS neutrals are supported by approximately 250 full-time associates.

Although JAMS is best known as a market-leading mediation provider, domestic and international arbitration comprises approximately 50 per cent of its annual revenue. Its reputation as a top-tier source of arbitrators owes much to both the vast experience of its panellists and to its ongoing internal training programmes through the JAMS Institute. All JAMS arbitrators, with very few exceptions, are full-time ADR practitioners who no longer practice law – thus assuring strict independence and impartiality. JAMS does not operate through external committees or advisory groups.

JAMS arbitrators sit in both cases administered by JAMS and not administered by JAMS. Many of JAMS's panellists are listed on the panels of other major arbitral institutions. Many are fellows of the Chartered Institute of Arbitrators.

All neutrals are vetted before joining JAMS and are subject to ongoing scrutiny. Party feedback is sought and welcome, both during and after arbitration. With increasing pressure on time and costs in arbitration, JAMS's close relationship with its neutrals offers a degree of oversight and, therefore, comfort to parties – regardless of whether JAMS is administering the case – that the process will be run in an efficient manner and that awards are delivered in a timely fashion.

In partnership with claims administrators and courts, JAMS has also created protocols and administered specialised programmes for handling mass claims arising from class actions, mass arbitrations, mass torts and bankruptcies.

JAMS is, thus, active across the entire spectrum of ADR products and services, as well as along the entire timeline of a dispute, up to and including the allocation of settlement funds in large-scale matters. Examples include the allocation of an US\$80 million settlement to over 13,000 claimants in the Unocal Refinery Litigation; the adjudication of over 35,000 African American Farmers discrimination claims; and compensation and overtime claims in retail industries.

Many JAMS neutrals serve as court-appointed special masters for settlement or discovery in multi-district and other complex US litigation involving pharmaceuticals (eg, Baycol, DES, Fen-Phen and Zyprexa), Agent Orange, employment discrimination and government audits.

JAMS established an office in London and sought to leverage London's status as a leading international dispute resolution destination to oversee complex commercial disputes from around the world. In doing so, it provides the opportunity to work closely with other regional and global arbitral institutions and neutrals outside JAMS's panel.

The launch of JAMS in the United Kingdom was followed by the opening of a resolution centre in Miami, Florida, recognising Miami's importance as an international business community and a gateway to delivering ADR services in the Caribbean and Latin America (CALA) region.

In 2020, JAMS opened a resolution centre in Houston, Texas, further expanding its CALA presence and, with leading neutrals in the field, provides services to the oil, gas and petrochemical industries. JAMS understands the importance of having a culturally sensitive and diverse panel and continues to offer a panel of Latin American experts with Spanish and Portuguese language skills.

Types Of Disputes Handled

JAMS handles multi-party, complex cases in virtually all areas of law. Matters include antitrust and competition law; bankruptcy; business; class action; commercial; construction; construction defects; e-discovery; education; employment; engineering and construction; entertainment and sports; environment; family; finance; franchise; government; healthcare; insurance and reinsurance; intellectual property; landlord and tenant; lender liability; licensing; patents; pharmaceutical disputes; professional malpractice; marital dissolution; mass tort; partnership; personal injury; probate; product liability; public policy; real estate; securities; toxic tort and trusts and estates.

Number Of Disputes Handled

Although the beginning of 2020 was turbulent, by the end of the year JAMS saw positive growth, which has extended into 2021. In 2021, JAMS handled a worldwide caseload of approximately 18,000 disputes, comprising over 7,000 arbitration filings with the remainder being mediation and hybrid processes.

DIVERSITY, EQUITY AND INCLUSION

The role of women and the promotion of diversity and inclusion in arbitration, particularly international arbitration, is something that has received a tremendous amount of attention over the past several years.^[7] International arbitration practice has been criticised for the dominance of a relatively narrow demographic. There have been many initiatives to promote women and diverse panels.

To further support this growth, groups such as Arbitral Women,^[8] the Equal Representation in Arbitration Pledge,^[9] ADR institutions, multinational corporations, bar associations and global law firms have shown a commitment to increasing diverse representation as counsel and neutral.

DIVERSITY INITIATIVES: JAMS'S APPROACH

Diversity, equity and inclusion are core values for JAMS, and we consistently track our progress against DEI goals. While acknowledging there remains room for improvement, 42 per cent of senior management are women; 70 per cent of employees are women, and 49 per cent of employees are diverse.^[10] In addition, 32 per cent of JAMS's panel in 2021 were women, which compares favourably with other leading arbitral institutions.

JAMS encourages external stakeholders to endorse and support diversity efforts. Our commitment to diversity is also evidenced by the introduction of a diversity and inclusion rider that can be added to its standard arbitration clause: 'The parties agree that, wherever practicable, they will seek to appoint a fair representation of diverse arbitrators (considering gender, ethnicity and sexual orientation), and will request administering institutions to include a fair representation of diverse candidates on their rosters and list of potential arbitrator appointees.'

Its commitment is also demonstrated by its appointment of a director for diversity outreach, tasked with driving forward multiple initiatives to ensure equal representation across the spectrum both for mediators and arbitrators.

JAMS was shortlisted for *Global Arbitration Review's* 2020 Equal Representation in Arbitration Pledge Award. The Pledge Award recognised leading international arbitral institutions and practitioners for their commitment to improving the profile and representation of women and minorities in arbitration.

In partnership with ArbitralWomen, JAMS has presented a series of seminars^[11] identifying the challenges faced by individuals from diverse backgrounds and the opportunities that the post-covid environment might encourage individuals who are responsible for the appointment of arbitrators to think more flexibly about the composition of an arbitration panel.

JAMS'S COMMITMENT TO THE COMMUNITY AND ADR DEVELOPMENT^[12]

JAMS Foundation

Because JAMS is committed to giving back to local, national and international communities, it established the JAMS Foundation in 2002. The Foundation, funded entirely by contributions from JAMS neutrals and associates, provides grants for conflict resolution initiatives and is now the world's largest funder of dispute resolution programmes and initiatives.

The JAMS Foundation has provided more than US\$11 million in grant funding since its inception.

Weinstein International Fellowship

The JAMS Foundation established the Weinstein International Fellowship programme in 2008 to provide opportunities for individuals from outside the United States to visit the United States to learn more about dispute resolution and to pursue a project of their own design that

serves to advance the resolution of disputes in their home countries. By 2020, 115 individuals representing 74 countries had participated in the programme.

The Foundation also established the annual Warren Knight Award and provides a US\$25,000 grant to an organisation that promotes dispute prevention and conflict resolution.

JAMS Society

The JAMS Society was created in 2002 to recognise and support volunteer opportunities and community involvement for JAMS associates at a local, 'hands-on' level. All associates are encouraged to become members of their local society and to collaborate on outreach programmes or to work individually on a project of their choice.

JAMS Society members participate in a diverse array of volunteer activities around the country, ranging from cleaning up the environment to improving the lives of children and seniors. The members have elected to make positive changes in their communities by participating in projects such as adopt-a-family programmes, AIDS walks, blood drives, clothing drives, meal deliveries to homebound seniors and other worthwhile endeavours.

Endnotes

- 1 SB766 'would permit an individual who is not admitted to practice law in California but who is a member in good standing of a recognized legal profession in the United States or a foreign jurisdiction and is subject to effective regulation and discipline by a duly constituted professional body or public authority to provide legal services in an international commercial arbitration or related proceeding, as specified. Additionally, the bill would subject an individual rendering legal services pursuant to this provision to the disciplinary jurisdiction of the State Bar, and it would direct the State Bar to annually report to the Supreme Court regarding the number and nature of any complaints that it has received against these attorneys and any actions it has taken in response to these complaints.' The full text of SB766 can be found at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=20172_0180SB766. [^ Back to section](#)
- 2 www.iso.org/standard/67065.html. [^ Back to section](#)
- 3 For more information please go to www.jamsadr.com/online. [^ Back to section](#)
- 4 The ICCA-NYC Bar-CPR Protocol on Cybersecurity in International Arbitration can be found at www.arbitration-icca.org/publications/ICCA_Report_N6.html. [^ Back to section](#)
- 5 Details of the Seoul Protocol can be found at www.kcabinternational.or.kr/user/Board/comm_notice.do?BD_NO=172&CURRENT_MENU_CODE=MENU0015&TOP_MENU_CODE=MENU0014. Additional commentary on the Seoul Protocol and post-COVID practice is available at www.jamsadr.com/blog/2020/the-seoul-protocol-on-videoconferencing-and-the-coronavirus-pandemic. [^ Back to section](#)

- 6 <https://iccwbo.org/publication/icc-discussion-paper-on-data-protection-principle-of-accountability>. [^ Back to section](#)
- 7 www.jamsadr.com/events/2020/adr-in-asia-conference-redesigning-international-arbitration. [^ Back to section](#)
- 8 www.arbitralwomen.org. [^ Back to section](#)
- 9 www.arbitrationpledge.com. [^ Back to section](#)
- 10 www.jamsadr.com/diversity. [^ Back to section](#)
- 11 JAMS 'Diversity in International Arbitration: The Intersection of Race and Gender – building on the future by learning from the past' webinar (9 June 2021); and JAMS, 'Diversity in International Arbitration: Progress in Times of COVID?' webinar (15 December 2020). [^ Back to section](#)
- 12 www.jamsadr.com/social-responsibility. [^ Back to section](#)



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