



The Arbitration Review of the Americas

2021

Overview: CAM-CCBC

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Across 18 chapters, and spanning 120 pages, this edition provides an invaluable retrospective from 39 leading figures. Together, our contributors capture and interpret the most substantial recent international arbitration events of the year just gone, supported by footnotes and relevant statistics. Other articles provide valuable background so that you can get up to speed quickly on the essentials of a particular country as a seat. This edition covers Argentina, Bolivia, Canada, Ecuador, Mexico, Panama, Peru and the United States; has overviews on nascent Brazilian jurisprudence on arbitration and corruption (in the wake of Operation Carwash) and on the coronavirus and investment arbitration, among other things; and an update on how Mexico's federal courts are addressing the problem of personal injunctions against arbitrators that have brought Mexico grinding to a halt as a seat.

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Overview: CAM-CCBC

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Summary

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IN SUMMARY

CAM-CCBC had a very special year in 2019: secretarial developments, the celebration of the centre's 40 years of experience and the largest CAM-CCBC Arbitration Congress in history. In 2020, the centre has faced one of the greatest challenges of its existence, adapting its institutional and administrative activities to the covid-19 global situation. Greater experience and several important developments resulted from these turbulent times and CAM-CCBC is glad to present its latest developments to the market.

DISCUSSION POINTS

- Brazil and its south-east's alternative dispute resolution (ADR) situation.
- CAM-CCBC statistics.
- Case management developments.
- Covid-19-related initiatives.

REFERENCED IN THIS ARTICLE

- Law No. 9,307, 23 September 1996.
- Law No. 13,129 of 26 May 2015.
- Brazilian public administration entities.
- Gabrielle Kaufmann-Kohler.
- Constantine Partasides.
- Decree NO. 4,311, 23 July 2002.

The Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CAM-CCBC) is the most traditional and the pioneer arbitral institution in Brazil. CAM-CCBC has over 40 years of experience in administering arbitration proceedings and today it also offers services for mediation, dispute boards and domain name dispute resolution, and acts as appointing authority in ad hoc proceedings upon request.

The institution's recognition was achieved through years of dedication and consistent excellence in ADR case management. Today, the centre has administered approximately 1,200 ADR proceedings^[1] involving the total amount of 96.5 billion reais – equivalent to US\$16.6 billion.^[2]

This is mainly the result of a modern and solid arbitration legal system in Brazil since 1996 and the support of state courts; case administration best practices; and the centre's active role in the development of arbitration in both domestic and international cases.

In 2020, the centre has faced a unique challenge, one of the largest in its history: adapting its services due to the covid-19 pandemic, maintaining cutting-edge quality as well as prioritising health and security for all parties involved.

BRAZILIAN ARBITRATION-FRIENDLY JURISDICTION

Brazil's legal framework pertaining to arbitration has proven to be solid and reliable, and it has set the foundations that turned the country into a true arbitration-friendly jurisdiction.

The enactment of the Brazilian Arbitration Act took place in 1996,^[3] based on the UNCITRAL Model Law. In 2001, the Brazilian Superior Court of Justice confirmed the constitutionality of the Brazilian Arbitration Act through a decision rendered in a paradigm case. With that and the adoption of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, ratified through a presidential decree on 23 July 2002,^[4] the legal framework established was in line with international standards from its conception.

The Arbitration Act was revised in 2015,^[5] and included clarifications regarding emergency proceedings and public administration-involving disputes. In addition to that, Brazilian courts have consistently shown a deep understanding and respect for party autonomy and for best practices in arbitration.

São Paulo is one of the most important financial hubs and largest business centres in Latin America (where CAM-CCBC's main headquarters are located). It is also considered one of the safest seats in Latin America and the wisest choice for arbitration according to relevant arbitrators, lawyers and companies throughout the globe.

ARBITRATION BEST PRACTICES

The arbitration-friendly environment described above has helped the centre to continuously develop and improve the administration of arbitration and ADR methods.

To keep applying and promoting best practices, CAM-CCBC has been constantly improving its internal proceedings and its institutional work. The unique case management model, certified by the ISO 9001:2015 – an international certification for quality service providers – guarantees the continuous promotion of efficiency and celerity to ADR proceedings.

In 2019, and through an independent audit process, the centre expanded this certification to all services offered, ensuring a high-quality standard of management also for mediation, dispute boards and Brazilian domain name dispute resolution.

Keeping up with international standards, CAM-CCBC's main hearing centre is located in Vila Olímpia, in the heart of São Paulo's business hub. It has state-of-the-art infrastructure, sound technology and IT, providing the best environment for the development of proceedings. The centre in São Paulo was remodelled in 2018 to provide even better infrastructure for clients and personnel. Special breakout rooms, built-in rooms for interpreters and an auditorium with a 90-attendee capacity are some of the features.

In 2019, CAM-CCBC expanded its presence in Brazil and opened a unit in Rio de Janeiro. CAM-CCBC's offices there include rooms for meetings and events, and are ready to receive documents and take phone calls. Rio de Janeiro is a strategic business hub in the country and the second-largest economy in Brazil.^[6] The centre has administered over 80 arbitration proceedings seated in Rio, 28 of which are currently ongoing.

Rio de Janeiro has issued specific rules establishing the requirements for arbitration agreements included in public contracts. Pursuant to these rules, the arbitration should be institutional, and once the dispute arises, one of the listed arbitral institutions should be appointed. CAM-CCBC meets the requirements and is listed among such institutions. CAM-CCBC's Rio de Janeiro unit's launch increases the centre's involvement in public administration-related disputes, some of the largest and most important cases in the country.

Statistics

The result of this continuous commitment and hard work has brought impressive results that reflect in the centre's statistics. Since CAM-CCBC's foundation,^[7] the 1,109 arbitration proceedings initiated amount to almost US\$15.5 billion in dispute.^[8] In turn, the 65 mediation proceedings administered amount to over US\$884 million.^[9]

Nowadays, there are 305 ongoing arbitration proceedings, distributed among eight case management teams, with an average duration of 13.2 months.^[10] In the past five years,^[11] an average of 100 cases were initiated before CAM-CCBC per year.

From CAM-CCBC's arbitration cases, 51 involve the public administration, with over US\$5.1 billion in dispute.^[12] In 2019 alone, seven cases involving state entities were initiated before the centre. In addition, parties informed the involvement of a third-party funder in eight cases and over 210 are multi-party arbitrations. In 2019, 28.86 per cent of the new cases involved multiple parties.

CAM-CCBC registered proceedings with parties from several different countries such as Brazil, Japan, Germany, Australia, China, the United Arab Emirates, the United Kingdom and others, while seats include São Paulo, London, Rio de Janeiro and Brasília – Brazil's capital city.

Concerning the disputes' profile, corporate contracts still represented the majority of cases in 2019, surpassing 50 per cent of the cases. Business contracts for sale of goods or services, or both, (15 per cent) and construction and infrastructure-related contracts (13 per cent) also stood out as subjects in many cases. Real estate, insurance and loans are other identified recurring subjects.

CAM-CCBC has the infrastructure to receive all kinds of disputes involving distinct business sectors and, in 2019, these sectors were especially varied. Construction and infrastructure (17 per cent), real estate (13 per cent), and transport and logistics stood out as the segments most involved in arbitrations before the centre.

CASE MANAGEMENT

One of the main reasons why CAM-CCBC is an industry leader in Brazil and recognised globally is because of its excellence in every aspect of the administration of ADR proceedings. The work developed by the centre is based upon six major pillars: efficiency, transparency, impartiality, independency, confidentiality and continuous improvements. These principles, along with the Secretariat work, have set the benchmark for quality secretarial services and established a solid reputation for the centre in both Brazil and abroad.

Each of the eight CAM-CCBC case managers, all certified lawyers with extensive practical and academic experience, will closely follow every step of the proceeding, from the filing of the request for arbitration until the rendering of the final arbitral award, with the aid of an assistant.

The case managers will also assist the arbitral tribunal and serve as a direct channel of communication between parties, counsel for parties and arbitrators, always observing the principles of impartiality and isonomy. Since 2018, each Secretariat team was appointed a specific area, including intellectual property, mediation, dispute boards, civil construction, maritime law, sport law, oil and gas, and so forth.

To comply with its goal of promoting transparency of its practice, CAM-CCBC publishes administrative resolutions (ARs) to complement its Rules, to rule on sensitive issues and provide more effectiveness to its services.

The latest AR published, apart from the covid-19-related ARs that are described below, concerns specific rules for the administrative support provided by CAM-CCBC for hearings and meetings.^[13] It established procedures for booking of infrastructure, hotels and aeroplane tickets, the usage and presentation of documents, administrative details regarding the hearing of witnesses and several other specific points to facilitate the programming of the hearing for the tribunal and the parties.

Apart from the ARs, CAM-CCBC is working on several other fronts to optimise its work and forward the transparency of the market. Below, we briefly describe some of them:

Working Group For Award-extract Publication

Throughout 2019, CAM-CCBC organised a working group in partnership with the University of São Paulo to conduct a research on the publication of arbitral awards' extracts. It aimed to provide more transparency regarding CAM-CCBC's cases, as well as to publish the content of arbitral decisions for market usage. No information concerning the specific cases, of course, will be released.

Secretariat Coordination

CAM-CCBC created a pioneer case management model in Brazil. Today, the centre is still innovating the market to provide even better case management and support to each of the 300 plus ongoing cases. The Secretariat Coordination began its activities last year. Cristiane Gertel and Silvia Salatino, two very experienced case managers, oversee the work of the eight case management teams and develop optimisations as the biannual rotation of assistants.

COVID-19-RELATED INITIATIVES

The covid-19 pandemic presented a challenge to all business sectors and areas of practice. For ADR methods and CAM-CCBC, it was no different. However, several measures taken by the centre mitigated possible damage, as will be described, and provided the necessary means for parties, lawyers and arbitrators to proceed with proceedings.

CAM-CCBC does not perceive significant changes in the number of proceedings initiated and ongoing due to the pandemic. Between 16 March 2020 and 15 May 2020, 16 ADR proceedings were initiated, a very close number to the 17 initiated in the same period of 2019. Equally, on 30 April 2020, 311 proceedings were ongoing at CAM-CCBC, while 323 were ongoing in the same date of 2019.

This is largely due to the measures taken by the centre to ensure the continuity of its services and to mitigate any losses to all parties involved: arbitrators, mediators, employees, parties, counsel and so forth.

Case Management

The first measure taken was the transfer of all employees to home office activities, since March, ensuring their security and health.

In sequence, following all international health and security provisions and considering CAM-CCBC's commitment to service excellence and the preservation of the legal security in Brazil, it issued two ARs on the subject.

AR 39/2020^[14] was the first. It established emergency measures, valid from March until 1 April 2020, including the suspension of in-person delivery of documents and petitions, recommendations concerning meetings and hearings, temporary remote attention to clients and other important measures.

The second AR, 40/2020^[15] is valid from 2 April 2020 until revoked^[16] and establishes broader rules for the continuance of proceedings 100 per cent remotely, which is applicable for ongoing and new proceedings.

The in-person filing of manifestations and documents is now made digitally, via e-mail and through a secure digital platform for document upload. The appointed case management team personally provides the links and oversees the document exchange through electronic means, ensuring security, equal treatment for all parties and the secrecy of proceedings.

In 2018, CAM-CCBC established rules for the digital conduction of the proceedings before the constitution of the arbitral tribunal, through AR 29/2018^[17] and, since then, has been working on establishing a full digital proceeding. This process was accelerated because of the pandemic, and the implementation of the remote conduction of proceedings was successful: hearings, meetings, protocols and the filing of new proceedings.

Institutional And Social Activities

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

The centre divides its efforts in the development of arbitration in Brazil, on one hand, by giving opportunities to students and practitioners here and abroad; and, on the other hand, in the world's knowledge of Brazil as an arbitration hub.

Worldwide, CAM-CCBC has several partnerships with chambers, institutions and universities, and is also present in many initiatives. In 2019, the centre was present in Europe, Africa, America and South America, in several countries and events.

That same year, CAM-CCBC also received an LLM candidate at Sciences-Po Paris for a three-month experience at the centre. The project will be further developed into a regular internship programme, improving the exchange of information and experience with students and practitioners.

In Brazil, CAM-CCBC is recognised as the pioneer institution in assisting the study and practice of arbitration and ADR. The centre regularly grants scholarships to Brazilian law students and practitioners in events and universities such as the Washington College of Law and the University of Miami School of Law, and organisations such as the Max-Planck Institute for Comparative and International Private Law in Germany, the Société de Legislation Comparée in Paris and the International Dispute Professional Academy in Vienna.

As a not-for-profit organisation, CAM-CCBC also has provided financial aid on numerous occasions to law students and numerous sponsorships to events such as the International Arbitration Competition of Asunción, the International Negotiation Competition,

the Consensual Dispute Resolution Competition (IBA-VIAC Mediation and Negotiation Competition) as well as the Willem C Vis Moot International Commercial Arbitration Moot.

In 2019, the CAM-CCBC Arbitration Congress was the largest in history, receiving over 500 enrolments and leaders in the field as speakers, such as Gabrielle Kaufmann-Kohler and Constantine Partasides. So was the São Paulo Arbitration Week, with 26 events promoted by 29 institutions in the course of one week.

However, now is the time to adapt to continue the exchange of knowledge, forward the study of ADR and promote social awareness in the ADR market. As was done with case management, CAM-CCBC also adapted its institutional and social activities to the pandemic situation and future perspectives.

CAM-CCBC is actively developing its institutional activities remotely, including, for instance, research, events and committees. Focusing on digital communications and client attention, some new ways of reaching the community are proving to be very effective.

Through digital platforms, the centre is able to reach further attendees and locations with webinars, as well as promoting events with a greater regularity. The centre's rule of at least 30 per cent female speakers in all events is being observed.

Special newsletters and media actions were programmed due to the covid-19 situation, to keep the community informed not only of CAM-CCBC's activities, but also of the current Brazilian situation. An example is the special campaign launched by the Arbitral Women Group to promote gender diversity in digital events through its social media, in which CAM-CCBC took part.

Solidarity is another important focus: CAM-CCBC donated the amount initially destined for the sponsorship of the notorious Brazilian Arbitration Committee's (CBAr) Annual Congress to São Paulo University's Medical School Hospital. With CBAr's support, the centre granted its contribution in support of covid-19 medical activities.

Finally, all of CAM-CCBC's webinars have been organised free of charge and, in each one, a member of the centre promotes a different social institution, proposing a donation by the attendees, in an effort to promote different social initiatives and help the largest number of projects possible.

CAM-CCBC intends, of course, to continue to promote such solidarity and social actions, as it already did before the pandemic, even after the crisis is through.

Future Perspectives

The challenges faced are many and will continue to rise in ways we cannot imagine now. For CAM-CCBC, it was a special challenge to adapt and expand digital proceedings already being developed in record time, continuing to offer services for administration proceedings and promoting social and institutional activities to the community.

In these hard times, the centre's focus is on maintaining the excellence of its services with the smallest degree of interference in proceedings, while ensuring their security and secrecy, as well as the community's integrity.

However, the steps taken must be celebrated and we are certain they will ultimately benefit institutional dispute resolution as a whole and the global community.

FINAL REMARKS

CAM-CCBC is constantly challenging itself to raise its standards in case management and institutional activities, leading the Brazilian and Latin American market and standing out in the international market for an increasingly efficient service and promotion of ADRs and Brazil.

The Arbitration Rules in force since 2012 and complemented by the ARs are aligned with the most internationally recognised arbitration rules and are one of the most important key elements to the centre's success. They are guided mainly by the principle of party autonomy and seek to inject a considerable degree of flexibility in the arbitral proceedings.

CAM-CCBC's work goes far beyond the delivery of cutting-edge services in the administration of ADR proceedings. The centre is constantly contributing to the development of the market in its daily activities. This hard and constant work, along with the serious commitment to its role in the administrative, institutional and international fields, guaranteed CAM-CCBC the leadership among the arbitral institutions not only in Brazil and Latin America, but worldwide.

Aware of its unequalled position towards the Brazilian arbitral community, CAM-CCBC is prepared to tackle future challenges with the best and most reliable structure, norms and internal processes to increase the professionalisation and internationalisation of its services, and will continue to support and publicise arbitration and other ADRs in Brazil and abroad.

Endnotes



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