THE 2010 REVISION OF THE ARBITRATION RULES OF THE CHAMBER OF ARBITRATION OF MILAN*

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CONTENTS

1 INTRODUCTION

The Chamber of Arbitration of Milan (**CAM**) was established in 1985, as a special agency of the local Chamber of Commerce, Industry, Handicraft and Agriculture. Besides arbitration, it offers other Alternative Dispute Resolution (**ADR**) tools in light of the functions legislatively referred to the Italian Chambers of Commerce[1]: mediation, online mediation and domain names dispute reassignment. The Chamber also provides materials and documentation by means of a library and its Research Centre for ADR, it carries out international projects, and is partner of the Italy-China Business Mediation Center (**ICBMC**).

The Chamber of Arbitration of Milan[2] has adopted a new set of arbitration Rules, which entered into force on 1 January 2010 ("the Rules")[3].

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1 Italian Law No. 580/1993 and legislative decree No. 23/2010.

2 For an overview on the CAM see *inter alia* Azzali, S., "Arbitrato amministrato" & Sali, R. "Arbitrato amministrato della Camera Arbitrale di Milano", in Buonfrate, A., and Giovannucci Orlandi, C. (eds.), *Codice degli arbitrato, delle conciliazioni e di altre ADR*, 2006, Turin, Utet, at

The 2010 Rules apply to both domestic and international arbitration. They improve and confirm the main features of the CAM administration system, update it to the Italian 2006 legislative reform on arbitration[4] and fill in certain gaps. Also, the new Rules take into account the growing practice of the CAM arising from a constantly increasing number of cases.[5]

The 2010 revision aims to provide the parties with an expedite, transparent and effective administration of the proceedings. To reach this goal, the revision (a) amended the internal function of the CAM's bodies,[6] (b) confirmed the institution's control on the independence of the arbitrators,[7] the duration[8] and the costs[9] of the proceedings, (c) enlarged the powers of the arbitrators,[10] and (d) cut off any redundant[11] or purely descriptive[12] provisions to make the final text shorter,[13] while reworded[14] some articles to make it clearer.

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p. 49; Coppo, B., "Comparing Institutional Arbitration Rules: Differences and Similarities in a Developing International Practice", (2010) 3 *International Arbitration Law Review*, at pp. 100 & 133.

3 The Rules are available in English, Italian and other languages at <www.camera-arbitrale.com>. The revision was set in motion in 2007 by a working group established within the Secretariat, whose proposals were discussed and revised by the Arbitral council. The final text of the new Rules was endorsed by the Arbitral council on 16 September 2009 and then approved by the Board of Directors of the CAM on 23 October 2009. The previous version of the Rules dated 2004.

4 Italian legislative decree No. 40/2006, which entered into force on 3 March 2006. See *inter alia* Bernardini, P., "Ancora una riforma dell'arbitrato in Italia", in *Diritto del commercio internazionale*, 2006, at p. 227; Carpi, F. (ed.), *Arbitrato*, Bologna, Zanichelli, 2006; Giovannucci Orlandi, C., "La nouvelle règlementation italienne de l'arbtirage après la loi du 2 février 2006", in *Revue de l'arbitrage*, 2008, 1, at p. 19; Ricci, E. F., "La delega sull'arbitrato", in *Rivista di diritto processuale*, 2005, at p. 1197.

5 The total number of cases administered by the CAM was 105 in 2004 and increased up to 153 in 2009. The international cases were 11 in 2004 and grew up to 35 in 2009, involving parties from all over the world. A detailed statistical report is available at the CAM's website, *supra* fn 5.

6 See *infra* § II.

7 See *infra* § V.

8 See *infra* § VII.

9 See *infra* § VIII.

10 See *infra* § VI.

11 This is the case in regards of Art. 9 of the former set of Rules, applying to cases governed by Italian law, which has been deleted in order to prevent any national reference that might affect the international spirit of the new Rules. Art. 9, Para. 1, ruled for arbitration to be "*ritual*" unless the parties determined it to be "irrituale*"* in the arbitration agreement. Thus, in case of doubt, arbitration was to be regarded as "ritual" in order to avoid any issue with the interpretation of the parties' will. This provision became redundant since the 2006 Italian Reform (Art. 808-*ter*, Para. 1, of the Italian Code of civil procedure [ICCP]) states that the parties may agree in writing on an "irrituale" arbitration, otherwise a "rituale" presumption shall apply (on the difference between the two see *inter alia* Biavati, P., "Arbitrato irrituale", in Carpi, F. (ed.), *Arbitrato*, Bologna, Zanichelli, 2008,at p. 160; Marinelli, M., *La natura dell'arbitrato irrituale. Profili comparatistici e processuali*, 2002, Giappichelli, Turin. As far as Art. 9, para. 2, was concerned, it applied to Italian corporate law disputes and it was intended to be consistent with the Italian corporate law Act's requirements on the way of appointment of the arbitral tribunal (legislative decree No. 5/2003, Art. 34, para. 2), by providing that all the members of the Arbitral tribunal were to be appointed by the Arbitral council, regardless of the content of an arbitral clause contained in the act of incorporation or founding or in the by-laws of a company. Italian scholars and

The exam of the 2010 amendments is here conducted following the order in which they are displayed in the Rules.

As a preliminary issue, today the CAM offers a new and single model of arbitration clause for the parties to consider when drafting their contracts[15]. The language of this standard clause is broader than the previous one[16]: it refers to arbitration any dispute "arising out of" or "in connection with" the contract containing the clause. The new version is consistent with the current international practice,[17] as well as with the 2006 Italian arbitration Reform.[18]

The revision makes clear that the Italian version is the official text, whilst the Rules can be translated and published in a number of languages.[19]

2 BODIES OF THE CAM (PREAMBLE)

The 2010 revision of the Rules has involved a restructuring of the arbitral council,[20] which is the technical body in charge of a general competence over the administration of cases (i.e. appointment and challenge of the arbitrators, determination of the costs of the proceedings etc.), with the aim of enhancing its competence and experience on both domestic and international sides. The Council is now composed of a minimum of seven up to a maximum of eleven members, one being the president and one the deputy, appointed for three years by the Board of the Chamber of Arbitration. The Board of the Chamber may appoint both Italian and foreign experts.[21] Today, the

case law have been debating on the validity of corporate arbitration clauses in regards to the way of appointment of the arbitral tribunal (see *inter alia* Auletta, F., "La nullità della clausola compromissoria a norma dell'Art. 34 d.lgs. 17.1.2003, n. 5: a proposito di recenti (dis-) orientamenti del notariato", in *Rivista dell'arbitrato*, 2004, at p. 361; Salvaneschi, L., "Clausole compromissorie statutarie di diritto comune: una specie che stenta a raggiungere la dovuta estinzione", in *Rivista di diritto processuale*, 2008, at p. 548; Zucconi Galli Fonseca, E., "La convenzione arbitrale nelle società dopo la riforma", in *Rivista trimestrale di diritto e procedura civile*, 2003, at p. 929). Art. 9, para. 2, of the CAM Rules was deleted since any issue on the validity of the arbitration agreement facing the 2003 Italian corporate law Act shall be subject to arbitrators and national courts only, on a case by case analysis, while no *a priori* solution may be fixed by the parties by agreeing on a set of rules.

12 See i.e. Art. 23 now omitting any reference to the fact that an order issued by the arbitrators may be revoked, since this remark is self-contained in the nature of any order.

13 Formally, the total number of provisions of the Rules has been reduced to 39 (from 43 of the 2004 edition).

14 This is the case for the new version of Art. 15 on the appointment of the Arbitral tribunal in multiparty arbitration, see *infra* § V.

15 Further models are available on the CAM's web site.

16 The model attached to the 2004 Rules made reference to the disputes "arising out of" the contract only.

17 Similar wording can be found in the models attached to the 1998 ICC Rules, the 2010 SCC Rules and the 1998 LCIA Rules.

18 See Art. 808-*quater* ICCP on the interpretation of the arbitration agreement.

19 The new Rules clarify that, whatever the language of the arbitration, the Secretariat performs its communications in Italian, English or French.

20 See the preamble of the Rules, at paras. 1-9.

21 This scenario has improved in respect of the 2004 edition, where the number of members were nine as a whole, two of whom were foreign experts.

meetings of the Council are valid when three members are present (instead of five, as under the 2004 Rules). This amendment and the use of any means of communication to attend the meetings, will grant a prompt intervention of the Council on the administration of the case. The president is still provided with the power to make any decision in case of urgency, if prevented, such a power moves to the deputy or the oldest member.[22] In addition, when a member of the Council abstains, he/she shall leave the meeting whilst the discussion of the matter on which he/she is abstaining continues and any measure is agreed.[23] This point clarifies that the abstention will not affect the 'quorum' of the validity of the meeting; furthermore, for sake of transparency, it mirrors the way of conduct commonly followed by the Council and clearly describes it to parties and arbitrators.

The Secretariat assists the arbitral council, the arbitrators and the parties in the course of each case. The Secretariat's tasks were enlarged in 2004 and now remain substantially unchanged, but for its decision on the language of the arbitration. According to Art. 5 of the Rules, the parties agree on the language of the arbitration, while failing any agreement, the arbitral tribunal decides. Today, in the absence of any agreement between the parties, the new Rules deprive the Secretariat of the power to provisionally determine the language while pending the tribunal's decision.[24] The CAM reasoned that the determination of the language relies on the will of the parties and – failing any agreement - of the arbitrators only. As a result, any institutional intervention was ruled out to smooth the proceedings.

3 GENERAL PROVISIONS APPLICABLE TO THE PROCEEDINGS (ARTS. 1-8)

The new Rules apply if they are referred to by the parties by whatever wording in their agreement (Art. 1), including any reference to the Chamber of Arbitration or to the Chamber of Commerce of Milan.

As for the procedural rules applicable to the proceedings, Art. 2 provides for a hierarchy equally topped by the CAM Rules *and* by rules agreed upon by the parties before the constitution of the arbitral tribunal,[25] as long as they are consistent with the

22 Any decision issued in case of emergency by the president, the deputy or the oldest member shall be referred to the Arbitral council at its next meeting.

23 See the preamble of the Rules, at para. 9.

24 Under the previous set of Rules, the Secretariat's determination was intended to save the proceedings from uncertainty since its very beginning. Nevertheless, the Secretariat's decision used to intervene after Respondent had filed its statement of defense. Consequently, only Claimant's reply to Respondent's counterclaim was filed in the language fixed by the Secretariat (the related provision is no longer contained in the CAM Rules, see *infra* § IV). Furthermore, problems might rise when the Secretariat's provisional determination was not confirmed by the Tribunal. In this case, although exceptional, time and costs for translation had to be weighted.

25 Such a time limit is consistent with Art. 816-*bis* ICCP and entails the terms upon which the arbitrators accept to perform their mandate towards the parties. Any subsequent agreement of the parties on the applicable rules would still be valid, while it would result in a good cause for the arbitrator to resign.

CAM Rules. Thus, the parties' agreement on some specific rules lay next to the provisions contained in the Rules of the CAM (also chosen by the parties), while – according to the 2004 Rules - the latter prevailed. Still, any gap shall be filed by the tribunal, once constituted. In any case, each party must be treated equally and be given a full opportunity to present its case ('due process principle').

A major modification concerns Art. 3, para. 3[26]: where the parties fail to agree on rules applicable to the merits of the dispute, then the tribunal shall apply the rules that it deems "appropriate"[27], taking into account the nature of the contractual relationship, the quality of the parties and any other relevant circumstance of the case at hand. Here, the Rules depart from the narrower approach of the previous edition, where the arbitrators were to apply the rules with which the subject matter of the dispute had "its closest connection". On the other hand, the CAM weighted the predictability of the tribunal's decision to be a critical issue for the parties, hence the new Rules anchor the arbitrators' determination to objective criteria, by requiring them to take into account the contractual aspects of the case, as well as the position of the parties.

The seat of the arbitration (Art. 4) is chosen by the parties either in Italy or abroad. Failing any choice, it shall be Milan. The arbitral council can fix it elsewhere, taking into account the requests of the parties and any other circumstances. In addition, the tribunal can conduct the proceedings in any other place.

Minor modifications appeared on the filing and sending of briefs (Art. 6), as well as on time limits (Art. 7).[28] On the other hand, a fundamental modification of the Rules has concerned Art. 8 on confidentiality. This provision is composed of two paragraphs. The first one is devoted to confidentiality itself, while the second concerns transparency. As to confidentiality, the CAM considers it to be one of the main features of international commercial arbitration.[29] Consequently, the duty of confidentiality (which covers the proceedings as well as the award) is spelt out in the

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26 Article 3, para. 1, remains unchanged and provides for the arbitrators to render their decision according to the rules of law, unless the parties expressly agreed on an *ex aequo et bono* decision. Furthermore, Art. 3, para. 2, provides for the parties to agree on the rules that the arbitrators shall apply to the merits of the dispute without any cut-off date (while the previous set of the Rules clearly limited the parties' common will to the arbitration agreement or, in any case, until the Tribunal was constituted). This new provision goes along with Art. 822 ICCP. In conclusion, Art. 3, Para. 4, still provides for the Tribunal to take into account trade usages.

27 This amendment is in line with the international practice, see *inter alia* Art. 17 of the 1998 ICC Rules.

28 As for the language of the arbitration see *supra* fn 26.

29 On this issue see *inter alia* Borghesi, D., "Arbitrato e confidenzialità", in Rubino-Sammartano, M. (ed.), *Arbitrato, ADR, conciliazione*, 2009, Bologna, Zanichelli, at p. 63; Dimolitsa, A., "Institutional Rules and National Regimes Relating to the Obligation of Confidentiality on Parties in Arbitration", (2009) *ICC Bulletin Special Supplement*, at p. 5; Fortier, Y., "The Occasionally Unwarranted Assumption of Confidentiality", (1999) 2 *Arbitration International*, at p. 131; Lazareff, S., "Confidentiality and Arbitration: Theoretical and Philosophical Reflections", (2009) *ICC Bulletin Special Supplement*, at p. 81; Paulsson, J., and Rawding, N., "The Trouble with Confidentiality", (1994) 1 *ICC Bulletin*, at p. 48; Smit, H., "Confidentiality in Arbitration"(1995) 3 *Arbitration International*, at p. 337.

new Rules and extended to the parties themselves.[30] It was recognised that no effort could lead to a comprehensive list of exception to such a duty, since so many differences may rise from each case according to the applying national rules. Hence, the Rules now make clear that the confidentiality duty set in para. 1 does not apply in the case where the information has to be "used to protect one's rights". This is an open way which includes i.e. the right to enforce or challenge the award. On the other hand, it goes without saying that a breach of the confidentially duty may take place if a party has a legal duty to do so, as this would prevail on the parties' agreed rules in any case. Turning to transparency[31], Art. 8, para. 2, provides that, for purposes of research, the CAM may publish the arbitral award in anonymous format, unless any of the parties objects to publication in the course of the proceedings. The 2004 Rules 'opt-in' attitude towards the publication of sanitized awards (i.e. only with a prior written consent of the parties) has been completely reverted in 2010: here, an 'opt-out' solution prevails, so that the CAM may render the award in an anonymous form and publish it, unless any of the parties objects during the arbitration.

4 COMMENCEMENT OF THE ARBITRATION (ARTS. 9-12)

The provisions of the CAM new Rules relating to the commencement of the proceedings (Arts. 9 "Request for arbitration" and 10 "Statement of defense") have been slightly modified, seeing that they were already consistent with the generally accepted practice of national and international arbitration.

As in 2004, the new Rules clarify that Respondent may file a counterclaim with its statement of defense[32], while the rest of former Art. 12 (paras. 2 and 3) – providing for Claimant to file a reply within thirty days - has been deleted.[33] In the 2004 text a step-by-step description aimed to track a clear path for the parties and offer a detailed analysis of Claimant's and Respondent's arguments before the arbitral tribunal's constitution to save time in full respect of the due process principle. Nevertheless, experience showed that most of times this was not the case.[34] Therefore, the CAM

30 According to the former Rules, the duty of confidentiality bound the Chamber of Arbitration, the Arbitral tribunal and the expert witnesses only.

31 On this issue see *inter alia* Aboul-Enein, M., "The need for Establishing a Perfect Balance between confidentiality and Transparency in Commercial Arbitration", (2007) 2 *Stockholm International Arbitration Review*, at p. 25; Buys, C. G., "The Tensions Between Confidentiality and Transparency in International Arbitration", (2003) 1 *American Review of International Arbitration*, at p. 121; Coppo, B., "Riservatezza vs. trasparenza nell'arbitrato internazionale e nei lavori di revisione del Regolamento UNCITRAL. La posizione del Club of arbitrators di Milano", (2008) 2 *Arbitraje. Revista de Arbitraje Comercial y de Inversiones*, at p. 605; Loh, Q., and Lee, E., *Confidentiality in arbitration: how far does it extend?*, 2007 Singapore, Academy Publishing; Rogers, C. A., "Transparency in International Commercial Arbitration", (2006) 5 *Kansas Law Review*at p. 1301.

32 See Art. 10, at para. 1.

33 This provision also ruled that the Secretariat might extend this time-limit.

34 Under the 2004 Rules, in most of the cases where a counterclaim was filed, one of the following situations used to occur: (i) Claimant filed its reply according to Art. 12, then the Tribunal was constituted, and before the arbitrators both parties requested time-limits to file their respective briefs, where Claimant tended to reproduce the content of its reply; or (ii) Claimant filed a very

decided to unburden the Rules of the reply to counterclaim, as no actual advantage could arise, leaving any decision in this regards to the tribunal once constituted. Furthermore, by deleting such a provision, no 30 days time-limit for the reply to counterclaim is now pending, and the case proceeds directly before the arbitrators.

Article 11 provides for a *prima facie* decision of the arbitral council of the CAM on the applicability of the Rules, and has remained unchanged. Besides, the new Rules (Art. 12) widen a waiver presumption failing any prompt objection raised by the party to the existence, validity or effectiveness of the arbitration agreement or lack of jurisdiction of the arbitral tribunal.[35]

5 THE APPOINTMENT OF THE ARBITRAL TRIBUNAL AND THE INDEPENDENCE OF THE ARBITRATORS (ARTS. 13-20)

On the number of arbitrators (Art. 13) and the way of appointment (Art. 14) the CAM acknowledge the primacy of the parties' will, providing for supplementary rules where they remain silent or fail to reach any agreement. No relevant modification occurred in 2010. To sum up, failing the parties' agreement, the arbitral tribunal shall consist of a sole arbitrator, unless the arbitral council considers that a panel of three arbitrators is appropriate, in view of the complexity or the economic value of the dispute. Also, if the arbitration agreement provides for an even number of arbitrators, the arbitral council shall appoint an additional arbitrator, unless otherwise agreed by the parties. When the sole arbitrator or the chairman of the tribunal is appointed by the arbitral council and the parties have different nationalities or registered offices in different Countries, then the Council shall appoint a person of a nationality other than those of the parties (so called 'third nationality rule'), unless otherwise agreed by the parties. In case of multiparty arbitration, the new Rules rephrase the previous provision for sake of clarity,[36] while its content remains unchanged as it has already been consistent with the international practice since the 1996 edition of the CAM Rules.[37] Art. 15 rules that in case of multiple parties (Claimants and/or Respondents), either they act as two sides (i.e. each one appointing an arbitrator), and then the chairperson is appointed in accordance with the parties' will (Para. 1), or, if such a bilateral scheme

brief reply according to Art. 12, then the Tribunal was constituted, and before the arbitrators Claimant requested a time-limit to file a full reply to the counterclaim; or (iii) Claimant did not take advantage of the possibility set by Art. 12, then the Tribunal was constituted, and before the arbitrators Claimant requested a time-limit to file its reply to the counterclaim.

35 See Art. 22 of the previous edition of the Rules was limited to objections in regards of the lack of jurisdiction of the Arbitral tribunal. The new Art. 12 corresponds to Art. 817 ICCP, and re-organises this issue by supporting the arbitration proceedings and expanding the Tribunal's competence.

36 See *supra* fn 16.

37 Reference is made to the well-known practice arising out of the *Dutco* case (Cour d'Appel de Paris, 5 May 1989, in *Revue de l'arbitrage*, 1989, at p. 723 and French Cour de Cassation, 7 January 1992, in *Revue de l'arbitrage*, 1992, at p. 470) which was already applied by Art. 5, para. 4, of the 1996 CAM Rules and by Art. 16 of the 2004 CAM Rules.

does not take place, the arbitral council shall appoint all the members of the tribunal (Para. 2).

The 2010 Rules (Art. 16) confirms that the CAM cannot appoint as arbitrator a member of its Board, or of the arbitral council, or its auditors and employees (so called 'incompatibility rule'). The 2004 edition barred professional partners, employees and all who had an ongoing cooperative professional relationship with those persons. Such a limit mainly concerned professionals working in the same law firm of a member of the arbitral council. The CAM has considered transparency as a key value of its system, and Art. 16 still hinder the arbitral council from appointing professionals working in the same law firms of its members. The institution's own perception is that, without such a rule, there might be a suspicious that few divas always play on the stage of the CAM arbitration, while it is not.[38] Nevertheless, such a low ceiling could frustrate the parties' freedom to select the best professional for the case at hand. Today, the CAM provides for the parties with the possibility to derogate the incompatibility rule. In this way, efficiency is preserved: the parties remain free to jointly adopt the best criteria for the selection of their arbitrators, whilst the CAM is limited by Art. 16 to preserve the appearance of its plain conduct when appointing an arbitrator.

The independence of the arbitrators[39] is a key-element for an arbitration to be effective and for any final award to be enforceable, because of the strict connection between the arbitrator's attitude and the respect of the due process principle. The CAM[40] has always paid the greatest attention to this aspect, and its Rules have been structured in order to prevent any misleading attitude of the arbitrators potentially affecting the efficiency of the proceedings. The new Rules confirm the duty of the arbitrators to be independent and impartial,[41] and to remain so throughout the proceedings[42].

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38 On the CAM's practice in regards of the appointment of the arbitrator see Sali, R., "How to chose the ideal arbitrator: the institutional point of view", available at: <http://www.european-arbitrators.org/EUROPEANARBITRATORS_FILES/CONTENT/Papers/RS%20How%20to%20choose%20the%20ideal%20arbitrator.pdf>, last accessed on 10 July 2010.

39 On this issue see *inter alia* Born, G. B., "Selection, Challenge and Replacement of Arbitrators in International Arbitration - Independence and Impartiality of Arbitrators", in *International Commercial Arbitration*, 2009, The Hague, Kluwer Law International, at p. 1461; Consolo, C. "La ricusazione dell'arbitro", in *Rivista dell'arbitrato*, 1998, at p. 17; Gaillard, E., and Savage, J. (eds.), *Fouchard Gaillard Goldman on International Commercial Arbitration*, 1999, Kluwer Law International, The Hague, at p. 561; Giovannucci Orlandi, C., "Ethics for International Arbitrators", (1998) 76, *UMKC Law Review*, at p. 93; Whitesell, A. M., "Independence in ICC Arbitration: ICC Court Practice Concerning the Appointment, Confirmation, Challenge and Replacement of Arbitrators", (2007) *ICC Bulletin Special Supplement*, at p. 7.

40 On the CAM's practice in this regards see Azzali, S., and Coppo, B., "Comment to a decision of England's Court of Appeal (Civil Division) rendered in 2000 in case [2000] EWCA Civ. 154, The "Saudi Cable" case", (2003) 2 *Stockholm Arbitration Report*, at p. 65.

41 CAM Code of Ethics, Arts. 5 and 6.

42 See Art. 18, para. 5; furthermore, Art. 6 of the Code of Ethics rules that the arbitrator's duty of independence is still pending "[...] after the award is filed, during the period in which annulment of the award can be sought".

Arbitrators are requested to sign a statement of independence[43] - disclosing any relationship with the parties or their counsel, any interest in the outcome of the dispute, any bias as to the subject matter, as well as time and duration of the above - and are subject to a challenge procedure.[44] Also, the Rules provide for the institution to confirm the arbitrators[45] and the CAM has a Code of Ethics attached to the Rules for the arbitrators to respect, which remained unchanged in 2010.

In regards of the substitution of the arbitrators (Art. 20) the Milan Rules now add to the list of grounds for removal (among resignation, challenge etc.) the case where the arbitrator is removed by all parties. In case of removal of an arbitrator, the Secretariat may suspend the proceedings. In any case, when the suspension is lifted, the time limit left for the new tribunal to file the award is extended to 90 days, if it is less than 90 days, in order to prevent any practical problem.

6 THE ARBITRAL PROCEEDINGS (ARTS. 21-29)

A number of modifications with regards to the power of the arbitrators have occurred along Chapter IV of the Rules ("the proceedings") with the purpose of fostering a quick and effective solution of the dispute, tailored to the case at hand.

Article 21 clarifies how the arbitrators formally constitute the tribunal by way of an act in writing, undersigned by the arbitrators, providing for the further steps of the proceedings.[46]

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43 See Art. 18, where by the 2010 revision modified the wording such that it is now as broad as possible in order to cover any aspect that is likely to affect the appearance of independence of the arbitrator.

44 See Art. 19the challenge procedure remains unaffected by the 2010 reform.

45 See Art. 18, para. 4 whereby the arbitrator's statement is transmitted to the parties who can file observations within 10 days. The Secretariat confirms the arbitrator when both two circumstances occur: (a) he/she filed a statement of independence without disclosing any situation, and (b) none of the parties submitted any comment within ten days from receiving it. In any other case, the Council decides on the confirmation. At four conferences held between 2008 and 2010, co-organised by the CAM, the SCC, the DIS and the VIAC, the Chamber acknowledged that, in its decisions on the arbitrators' independence, the Council takes into consideration the *IBA Guidelines on conflict of interests in international arbitration*, (available at <www.ibanet.org>, last accessed on 10 July 2010), though it does not apply them. On the IBA Guidelines see *inter alia* Lawson, D. A., "Impartiality and Independence of International Arbitrators – Commentary on the 2004 IBA Guidelines on Conflicts of Interest in International Arbitration", (2005) 1 in *ASA Bulletin*, at p. 22. The CAM approach to the IBA Guidelines can be found in the draft report, dated 25 January 2010, edited by a Sub-committee of the IBA Arbitration Committee, monitoring the first five years of the IBA Guidelines, available at: <http://www.ibanet.org/LPD/Dispute_Resolution_Section/Arbitration/Default.aspx>, last accessed on 10 July 2010.

46 When revising the Rules the CAM discussed whether to introduce the terms of reference (TOR) for the parties and arbitrators to sign. Even if no expressed provision has ever appeared in the editions of the CAM Rules, international cases administered by the CAM have constantly shown this practice. Finally, a decision was made not to bound the CAM proceedings to the TOR practice necessarily, so as to avoid any undue burden or delay for many a case (i.e. purely domestic cases). It is left to the Tribunal and the parties to agree on signing the TOR where they deems it appropriate (and when they are familiar with its practice). When they do not, the arbitrators will

The 2010 Rules[47] support the possibility for the tribunal to attempt an amicable settlement of the case between the parties by stating that the arbitrators may delegate such an attempt to the Mediation Service of the CAM[48]. Making reference to a mediation attempt conducted by professional mediators – instead of arbitrators themselves – is a possibility that the new Rules officially introduce, also with the aim of preserving the tribunal's independence and impartiality.

The CAM[49] confirms the power of the arbitral tribunal to issue all urgent and interim measures of protection, even of an anticipatory nature, that are not barred by any mandatory provisions applicable to the case.[50]

In the new Rules, the Chamber makes clear that consolidation, separation and third party's intervention are key-issues only for the arbitrators to decide upon.[51] Consequently, the Rules (Art. 22, para. 3) provide the tribunal with the power to consolidate multiple proceedings pending before it, when it deems them to be connected, without any longer relying on an *objective* connection,[52] while it is left to the tribunal's discretion to consider the peculiarities of the case at hand. The Rules (Art. 22, para. 4) also clarify the power of the arbitrators to separate parallel proceedings concerning several disputes. Finally, Art. 22, para. 5, considers the case when a third party files a request to join the case, or it is requested to join the case by any of the parties: in these situations, any decision is left to the tribunal taking into account the parties' positions and all the other relevant circumstances of the case (i.e. the applicable law).

The arbitrators' power have been enlarged also in regards of new claims. The Rules[53] omit any definition of when a claim shall be considered to be new, and now refer any

constitute the Tribunal by way of an act contained in an order, or by scheduling a hearing and taking minutes, where they set the procedural steps of the case and a calendar (i.e. granting the parties an opportunity to file briefs and documents). From the constitution of the Tribunal runs the six month time limit set for the arbitrators to render the final award, according to Art. 32.

47 See Art. 22, at para. 1.

48 The CAM Mediation Service has been developing along the last decade and now offers an international set of Rules, a panel of qualified international mediators, and a constantly improving experience. Further information available at <www.milanmediation.com>.

49 See Art. 22, at para. 2.

50 The Rules so acknowledge the limits set by Italian law, where applicable, according to which arbitrators are prevented to issue any interim measures (Art. 818 ICCP). Such a restriction is experiencing an opening in corporate law filed (see Art. 35, para. 5, of legislative decree No. 5/2003).

51 See Art. 22, at paras. 3-5: when revising the Rules, the CAM considered the fact that the complexity of its cases has been increasing, as well as the number of multiparty cases, and the fact that both the 2006 ICCP (art. 816-*quinquies*) and the 2003 Italian corporate law Act (Art. 35, para. 2) ruled on these issues. Secondly, the CAM wondered what the role of the Arbitral council should be in these regards, if any, and whether the Secretariat should intervene within a certain stage (i.e. before the constitution of the arbitral tribunal). At the end of the revision process, it was set that any decision shall rely on the arbitrators.

52 As required by the previous set of Rules.

53 See Art. 27.

decision on the admissibility of new claims to the arbitrators,[54] who shall decide taking into account the parties' points of view and any other circumstance, including the phase of the proceedings.

The power of the arbitrators have been expanded in the closing phase of the proceedings as well. When the tribunal is ready to issue its award, the only mandatory requirement is for the arbitrators to close the taking of evidence phase and invite the parties to file their conclusions (Art. 28, para. 1), that is to say their final prayers for relief.[55] The opportunity to set any subsequent time limit for filing final statements or rebuttal briefs, or scheduling a final hearing for discussion, is left to the tribunal only.[56] From then on, the parties are barred from filing any new claim, presenting new facts, or submitting new documents or proposing new evidence, unless the arbitral tribunal so decides (Art. 28, para. 3).

7 THE ARBITRAL AWARD (ARTS. 30-34)

Only few of the provisions dealing with the arbitral award were affected by the 2010 revision. The main goal of the amendments has been to update the Rules in light of the 2006 Italian Reform.[57] The 2004 edition ruled separately on the deliberation of the award, and on its form and content. Today, the two rules have melt into Art. 30. Here, para. 1, deals with the deliberation of the award: it provides for the award to be issued by a majority decision, while all the members of the tribunal shall join the discussion, stating the reasons for the arbitrator who could not or did not want to sign it. The 2010 Rules do not require any specific way for the arbitrators to deliberate:[58] the previous edition of the Rules provided for the arbitrators to deliberate by way of a meeting in person only if the rules applicable to the proceedings so required. This provision mirrored the Italian legislation in force before the 2006 Reform;[59] in 2006 such a system was revised, and today no personal meeting is required unless a member of the tribunal so requests.[60] Consequently, the 2010 Rules do not cover this issue any longer, and the arbitrators will refer to the national applicable rules, if any, in this regard.

One of the reasons for the parties to select arbitration is to avoid time-consuming State courts proceedings. Nevertheless, arbitration has been more and more criticised for

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54 On the contrary, in the 2004 edition, Art. 30 stated that a new claim was to be decided by the Tribunal where (a) the party against which the claim was filed declared that it accepted the adversarial proceedings on it, and it did not object thereto before raising any defense on the merits; or (b) the new claim was objectively connected with one of the already pending claims.

55 Whether contained in closing briefs or in a separate sheets.

56 According to the previous set of Rules the Tribunal had to grant a time limit to file the final statements if requested by any of the parties.

57 See Art. 823 ICCP.

58 The Rules excludes any reference to a meeting in person ("*conferenza personale*").

59 Before the 2006 Reform entered into force, Art. 823, para. 1, applying to domestic arbitration, and to Art. 837, to international arbitration, provided that the arbitrators had to meet in person to issue a domestic award, while this could happen by way of videoconference in case of international arbitration.

60 See Art. 823, para. 2, ICCP.

having turned into a "slow track" dispute resolution method.[61] In this regards, the CAM Rules provides for the arbitrators to render the final award within a six months pre-established time limit (Art. 32), unless otherwise agreed by the parties. This time limit runs from the arbitrators' formal constitution.[62] The Chamber is aware that a complex case might last longer than six months. Yet, this provision has been maintained and addresses a clear message to the arbitrators to grant a time-efficient conduct of the case, when acting under its Rules.[63] Furthermore, the CAM controls any extension of the said time limit, in light of the predictability of the duration of the case. It is up to the Secretariat to extend this time limit when the parties so agree, while the Council decides in any other case.[64] Both parties and arbitrators can rely of the CAM's prompt cooperation, since under the new Rules the Council can intervene even *ex officio*.

The 2010 Rules amended the provision on the correction of the award (Art. 34) by identifying its steps and predicting its duration. The request for correction shall be filed within 30 days from receiving the award, and the tribunal shall decide within 60 days from receiving the request, after having granted the parties the possibility to comment thereto in respect of the due process principle. Further, the Rules now make plain that the correction decision of the arbitrators is part of the award. Finally, no added costs are requested for the correction, unless otherwise decided by the Chamber.

8 COSTS OF THE PROCEEDINGS (ARTS. 35-38)

Predictability of costs is regarded as a great advantage of institutional arbitration. The Rules confirm that fixed criteria apply by drawing a connection between the amount in dispute and the fees for the arbitrators' and the CAM in accordance with a schedule[65] attached to the Rules. Only minor amendments occurred in 2010 with the aim of clarifying and speeding certain aspects.

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61 See *inter alia* Davis, B., "Fast-Track Arbitration and Fast-Tracking Your Arbitration", (1992) *Journal of International Arbitration*, at p. 43; Müller, E., "Fast-Track Arbitration: Meeting the Demands of the Next Millennium", (1998) *Journal of International Arbitration*, at p. 5. A debate has been growing along the last decades. Finally, in 2007 the ICC issued a set of "Techniques for controlling time and costs in arbitration" addressed to parties, lawyers and arbitrators in order to encourage a quick conduct of the arbitral proceedings, available at <www.iccwbo.org/court/arbitration>, last accessed on 10 July 2010. The CAM statistics (available on the Chamber's website) show that the final award was rendered in 13, 1 months in 2009 and in 2008, and 13,4 months in 2007. Yet, the growing number of new cases filed within the CAM in 2009 has not had any direct impact of these data, since most of the new requests are still pending.

62 See Art. 21.

63 This provision is connected to Art. 4 of the Code of Ethics of arbitrators, which requires that "When accepting his mandate, the arbitrator shall, to the best of his knowledge, be able to devote the necessary time and attention to the arbitration to perform and complete his task as expeditiously as possible."

64 See Art. 32, at para. 2.

65 In 2010 the schedule of fees remains unchanged.

The costs of the arbitration cover the arbitrators' fees, the CAM's fee,[66] the tribunal's expert's fee and both the arbitrators' and the expert's expenses (Art. 36, paras. 4 and 5). As said above, costs rely on the amount in dispute, and they are fixed in accordance with a schedule of fees. The amount is referred to one of the baskets of the schedule to which arbitrators' and administrative fees correspond, and is calculated on the basis of all the parties claims.[67] When deciding on the costs, the arbitral council takes into consideration the activities performed by the tribunal, the complexity of the case, the length of the proceedings and any other circumstance.[68] The Council may determine different fees for each member of the arbitral tribunal and in exceptional cases it may deviate from the amount set in the schedule of fees, going either below or above it.[69] As for the arbitrators' fees, there is a schedule of fees for the sole arbitrator, then a different one in case of a panel; for each basket of the amount in dispute there is a minimum and a maximum fee:[70] the Council determines the exact amount between the two on a case-by-case examination. While for the CAM's fee, a fixed amount corresponds to each basket.

As for when the payment is made, the Secretariat fixes the advance(s)[71] on payment[72], while the Council makes the final determination[73]. Parties are requested to pay advance on costs[74] after Respondent's statement of defence to the request for arbitration is submitted.[75] The parties are jointly and severally liable for the costs of the arbitration.[76] Nevertheless, the Secretariat may determine separate costs when the parties submit different claims.[77] In this case, the new Rules make clear (Art. 35, para. 4) that both the institution and the tribunal's fees could not exceed the maximum set for where the division did not occurred.

As for Art. 38, if a party fails to pay, then the other party is given the opportunity to make a substitute payment, unless the amounts in dispute are separated. If the requested amount remains unpaid, then the Secretariat may suspend the proceedings in regard of the claims whose costs are unpaid. The suspension lasts one month and then,

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66 As for the CAM's fee, Annex "B" of the Rules lists included and excluded activities. No registration fee is requested when filing the request for arbitration.

67 The CAM takes into account Claimant's request for arbitration, Respondent's statement of defence, any other briefs submitted by the parties and any observations coming from the arbitrators: Art. 35, at paras. 1 and 2.

68 See Art. 36, at para. 6.

69 See Art. 36, at para. 6, *i.e.* where the parties withdrawn the case before the final award is rendered.

70 When the amount in dispute goes over € 100 000 000, a fixed percentage applies.

71 The Secretariat may requests for additional advances along the proceedings, considering the activities performed by the arbitrators or any change in the amount in dispute (Art. 37, para. 2).

72 See Art. 37, para. 1.

73 See Art. 36, para. 1.

74 According to Art. 21, the advance on costs is to be paid in order for the Secretariat to forward the request for arbitration and the statement of defense to the Arbitral tribunal.

75 See Art. 37, at para. 1.

76 See Art. 37, at para. 4.

77 See Art. 35, at para. 3.

in lack of any payment, the Secretariat may dismiss the claim.[78] This is one of the main modification on costs, as the suspension previously lasted two months. In the CAM's practice, this period of time showed to be too long: parties are constantly reminded of the economical situation of the case, while no suspension occurs automatically, so that the suspension never results in an unpredictable event and when it intervenes there is no actual need to linger any longer. Finally, Art. 37, para. 6, now sets that the Secretariat may accept part of the costs by bank guarantee, or by another form of security.

9 CONCLUSION

The developed CAM's practice in administering its cases and the 2006 Italian arbitration Reform stand behind 2010 revision of the Rules. What lies ahead? An opportunity.

Potentially, the new Rules are but a tool and their use depends on the ones in whose hands they rest: they are innovative, flexible and up-to-date but not any original or unfamiliar to use. Indeed, while the essential structure of the CAM's system is confirmed, the new Rules offer a chance to speed arbitration up and suit it to the peculiar needs of the case at hand, in accordance with the best international practices. As described above, several articles have been improved, rewritten or clarified, whereas their meanings remained unchanged. These adjustments, together with intended amendments and completely new rules provide the parties, the arbitrators and the Institution with a chance to conduct the proceedings efficiently.

[78] See Art. 38, at para. 3.