



MILAN  
CHAMBER OF  
ARBITRATION

# PROCEDURE AND SERVICES UNDER THE UNCITRAL ARBITRATION RULES



January 1<sup>st</sup>, 2016

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## PROCEDURE

### I. General provisions

- Art. 1 Bodies
- Art. 2 Scope
- Art. 3 Confidentiality
- Art. 4 Entry into force
- Art. 5 Reference

### II. CAM as appointing authority

- Art. 6 Information
- Art. 7 Filing
- Art. 8 Number of arbitrators
- Art. 9 Appointment of arbitrators
- Art. 10 Challenge of arbitrators
- Art. 11 Replacement of arbitrators
- Art. 12 Consultation on fees and expenses of arbitrators

### III. Other services

- Art. 13 Resource service
- Art. 14 Administrative services
- Art. 15 Expert witness
- Art. 16 Costs management and decision
- Art. 17 Deposits management

### IV. Appendix I: Costs

### V. Appendix II: Model clauses

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## I. General provisions

### Art. 1 Bodies

The Chamber of Arbitration of Milan (CAM) performs the tasks provided for in the Procedure through the Arbitral Council and the Secretariat.

### Art. 2 Scope

1. The Procedure, § II “CAM as appointing authority” shall apply where CAM is designated as appointing authority in accordance with the UNCITRAL Arbitration Rules;
2. The Procedure, § III “Other services” shall apply in an arbitration under the UNCITRAL Arbitration Rules where the parties so agreed in the arbitration agreement or at any time after the arising of the dispute.
3. Where CAM performs any task according to the Procedure, § I “General provisions” shall apply.
4. CAM performs its task in accordance with the Procedure where it is satisfied that an agreement providing it to act may exist. Any objection shall be prima facie decided by the Arbitral Council
5. The Procedure applies to cases under the UNCITRAL Arbitration Rules<sup>1</sup>
6. CAM Procedure is edited on the UNCITRAL Arbitration Rules as revised in 2013. If so empowered by the agreement of the parties or where designated by the Secretary General of the Permanent Court of Arbitration in The Hague, CAM shall apply, mutatis mutandis, the Procedure to cases under the 2010 and the 1976 UNCITRAL Arbitration Rules or any forthcoming versions.

### Art. 3 Confidentiality

CAM shall keep any information confidential.

### Art. 4 Entry into force

The Procedure is in force as of 1 January 2016.

### Art. 5 Reference

Where the Procedure makes reference to the CAM Arbitration Rules, its Code of Ethics of arbitrators or Schedule of fees, such a reference is to the version in force

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at the time when the request for any services is filed with CAM.

## II. CAM as appointing authority

### Art. 6 Information

When CAM acts as appointing authority under the Procedure, the Secretariat may require any party and arbitrator to provide the information it deems necessary, and give, where appropriate, the parties and the arbitrators an opportunity to present their views in any manner it considers appropriate by setting a time limit thereto. All the information so provided shall be sent to all the parties.

### Art. 7 Filing

Any request or information, where in hard copy, shall be filed in a sufficient number of copies as to allow all the parties and arbitrators to receive one, plus one for CAM, in accordance with the Secretariat's determination.

### Art. 8 Number of arbitrators

Where a party requests CAM to apply the corrective mechanism on the number of arbitrators set by Art. 7.2 of the UNCITRAL Arbitration Rules<sup>2</sup>, the task is performed by the Arbitral Council, whose decision is taken in view of the circumstances of the case, and in particular of its complexity and value.

### Art. 9 Appointment of arbitrators

1. The appointment is made by the Arbitral Council promptly. To perform this task, the Arbitral Council follows the rules set on its functioning by the CAM Arbitration Rules<sup>3</sup>.
2. When appointing an arbitrator, the Arbitral Council shall have regard to any requirement agreed upon by the parties, the nature of the dispute, the expertise on the subject matter of the dispute, and on any rules applying both to the merits and the proceedings, to any language ability, as well as to any other circumstances.
3. The Arbitral Council shall have regard to such considerations that are likely to secure the appointment

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- of an independent and impartial arbitrator, regardless of his/her role within a panel.
4. Unless the parties agree otherwise, the Arbitral Council cannot appoint as arbitrators the following persons:
    - a) members of the Board, members of the Arbitral Council and auditors of CAM;
    - b) employees of CAM;
    - c) professional partners, employees and all who have an ongoing cooperative professional relationship with the persons indicated at point a).
  5. Where appointing a sole or presiding arbitrator,
    - a) CAM follows the list procedure set forth in Art. 8.2 of the UNCITRAL Arbitration Rules<sup>4</sup>, unless the parties agree that the list procedure shall not apply, or the Arbitral Council determines that it is not appropriate;
    - b) where the parties have different nationalities or registered offices in different countries, the Arbitral Council shall appoint as a sole or presiding arbitrator a person of a nationality other than those of the parties, if so requested by any of the parties;
    - c) the Secretariat collects a declaration of independence and impartiality from each candidate designated by Arbitral Council as arbitrator in accordance with the list procedure, and forwards the information to the parties;
    - d) when the list procedure is concluded, the Secretariat informs the parties of the appointment.
  6. Where the parties agreed on a panel of three arbitrators, and a party fails to appoint an arbitrator, the other party may request CAM to make the appointment of the second arbitrator. In this case, the Arbitral Council exercises its discretion and no list procedure applies. The Secretariat collects a declaration of independence and impartiality from the arbitrator, and forwards the information to the parties.

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7. In case of multiparty arbitration, failing the constitution of the arbitral tribunal under the UNCITRAL Arbitration Rules, upon request of any party, the Arbitral Council shall appoint the arbitral tribunal, according to Art. 10.3 of the UNCITRAL Arbitration Rules<sup>5</sup>.

#### Art. 10 Challenge of arbitrators

1. When a request for a decision on the challenge of an arbitrator is filed according to Art. 13.4 of the UNCITRAL Arbitration Rules<sup>6</sup>, the Secretariat may set a time limit for the concerned arbitrator, any other party and arbitrators to comment in writing on the challenge. The Secretariat communicates such comments to parties and arbitrators, and then submits them to the Arbitral Council.
2. When making its decision, the Arbitral Council may take into consideration the Code of Ethics of Arbitrators attached to the CAM Arbitration Rules.
3. The decision of the Arbitral Council shall be final and binding on the parties.

#### Art. 11 Replacement of arbitrators

1. In case a request is made under Art. 14.2 of the UNCITRAL Arbitration Rules<sup>7</sup>, the Arbitral Council, when assessing the exceptional circumstances of the case, shall take into account any applicable rule and the stage of the proceedings.
2. In any case, the Arbitral Council shall appoint a substitute arbitrator directly where the one appointed or chosen pursuant to the procedure provided for in Articles 8 to 10 of the UNCITRAL Arbitration Rules was already replaced twice.

#### Art. 12 Consultation on fees and expenses of arbitrators

The fees and expenses of the arbitrators shall be reasonable in amount<sup>8</sup>. When CAM is seized with a request for comment on cost as per Art. 41.3 and 4<sup>9</sup>, and 43.3<sup>10</sup> of the UNCITRAL Arbitration Rules, the Secretariat, upon consultation with the President of the Arbitral Council, performs this task by taking into account any proposal of

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the arbitral tribunal, the amount in dispute, the complexity of the case, the time spent by the arbitrators, and any other relevant circumstances, as well as the CAM Schedule of Fees and the CAM Arbitration Rules on costs.

### III. Other services

#### Art. 13 Resource service

Parties and arbitrators are granted access to the Studies and Documentation Centre G. Schiavoni<sup>11</sup>, where a library focused on arbitration and online resources are available.

#### Art. 14 Administrative services

##### 1. Maintenance of the arbitration file

Upon request of the parties or the arbitral tribunal, a copy of any brief, document, communication, order etc. shall be directed to the Secretariat, which collects, dates and files them<sup>12</sup>. For the compliance of any time limit set by the UNCITRAL Arbitration Rules or the arbitral tribunal, the date on which any transmission has been completed with the Secretariat shall be taken into consideration.

##### 2. Hearings<sup>13</sup>

Upon request of the parties or the arbitral tribunal, CAM hosts hearings at its premises<sup>14</sup>. The Secretariat assists the arbitral tribunal in establishing the date, time and place of the hearing. Upon request of the arbitral tribunal, a member of the Secretariat attends<sup>15</sup> and takes minutes of the hearing. Clerical support is provided<sup>16</sup> for hearings held at the CAM premises.

##### 3. Recording, transcript, interpretation, conference facilities

Upon request of the parties or the arbitral tribunal, the Secretariat arranges recording, transcript, interpretation services and conference facilities<sup>17</sup> for hearing to be held at its premises, while any costs shall be borne by the parties.

#### Art. 15 Expert witness

##### 1. The arbitral tribunal may delegate the appointment of its expert to CAM, that performs this task through the Arbitral Council.

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2. The Arbitral Council exercises its discretion and no list procedure applies. The Secretariat collects a declaration of independence and impartiality from the expert, and forwards the information to the parties and the arbitral tribunal.
  3. The so appointed expert shall comply with the Code of Ethics of Arbitrators attached to the CAM Arbitration Rules.
  4. The provisions of the Procedure on the challenge of arbitrators apply.

#### Art. 16 Costs management and decision

1. Upon request of the parties to be filed with CAM before the constitution of the arbitral tribunal, CAM shall manage the costs of the arbitration as a whole, by determining the value of the dispute, fixing and collecting advances and deciding the final amounts in accordance with its Arbitration Rules and Schedule of Fees.
2. By such a request, the parties undertake to apply the CAM Arbitration Rules in case of any failure to pay.
3. The Secretariat may require any party and arbitrator the information it deems necessary for CAM to perform its tasks.
4. The arbitrators' expenses shall be reasonable. Expenses are reimbursed upon submission and verification of their supporting invoices and receipts<sup>18</sup>.
5. Where an expert witness is appointed by whatever appointing authority, the CAM's costs management and decision will cover the expert's fee and expenses according to this provision.

#### Art. 17 Deposits management

1. In alternative to Art. 16, upon request of the parties or the arbitral tribunal, the Secretariat holds the deposits of the arbitrators' fees and expenses, as determined in accordance with the UNCITRAL Arbitration Rules.
2. The arbitrators' fees are paid after the conclusion of the case. The Secretariat may dispose interim



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payments upon request of the arbitrators, provided that significant steps of the proceedings are made or significant expenses occurred.

3. The Secretariat reports to the parties and the arbitral tribunal any lack of payment.

#### IV. Appendix I: Costs

##### CAM as appointing authority

For its service as appointing authority (under Articles 9, 10 and 15 of the Procedure), CAM will charge the requesting party a fixed amount of EUR 3 000 (VAT excluded).

The fee shall be paid when the request is submitted to CAM. If the fee is not provided together with the request, CAM shall fix a time limit within which the fee shall be paid. If no fee is provided within the said time limit, the request is dismissed.

##### Fees for other CAM services

Parties may request one or more services of those offered by CAM pursuant to the Procedure (§ II Article 12; § III - Articles 13-17). In this case, the fee is previously fixed by CAM on the basis of the requested services<sup>19</sup>.

##### Fees for the CAM administration of the arbitration as a whole

For the administration of the arbitration as a whole under the Procedure, CAM applies the Schedule of Fees attached to its Arbitration Rules in force at the time when the request is filed<sup>20</sup>.

#### V. Model clauses

Parties can consult CAM when drafting their arbitration agreement.

**Model clause for UNCITRAL arbitration designating CAM as appointing authority and providing for its services:**

*Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules.*

*The Chamber of Arbitration of Milan shall act as appointing authority and provide services in accordance with its Procedure for cases under the UNCITRAL Arbitration Rules.*

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**Model clause for UNCITRAL arbitration designating CAM as appointing authority:**

*Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules.*

*The Chamber of Arbitration of Milan shall act as appointing authority.*

**Model clause for UNCITRAL arbitration providing for CAM services:**

*Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules.*

*The appointing authority shall be...*

*The Chamber of Arbitration of Milan shall provide services in accordance with its Procedure for cases under the UNCITRAL Arbitration Rules.*

In any case, parties should consider adding the following:

*“(a) The number of arbitrators shall be ... [one or three];*

*“(b) The place of arbitration shall be ... [city and country];*

*“(c) The language to be used in the arbitral proceedings shall be ... ”.*

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## Foot notes

<sup>1</sup> [www.uncitral.org](http://www.uncitral.org)

<sup>2</sup> Art. 7.2 of the UNCITRAL Arbitration Rules: “Notwithstanding paragraph 1, if no other parties have responded to a party’s proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with articles 9 or 10, the appointing authority may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8, paragraph 2, if it determines that, in view of the circumstances of the case, this is more appropriate.”

<sup>3</sup> As for the day of entry into force of the Procedure, reference is made to the 2010 CAM Arbitration Rules, Preamble, the Arbitral Council: “1. The Arbitral Council has general competence over all matters relating to the administration of arbitral proceedings and issues all orders relating thereto, without prejudice to the Secretariat’s functions under the Rules. 2. The Arbitral Council is composed of a minimum of seven up to a maximum of eleven members, one of whom acts as president and one as deputy, all appointed for three years by the Board of the Chamber of Arbitration. 3. The Board of the Chamber of Arbitration may appoint both Italian and foreign experts as members of the Arbitral Council. 4. The meetings of the Arbitral Council are chaired by its president or, if absent, by the deputy or, if both are absent, by its oldest member. 5. The meetings of the Arbitral Council are valid where at least three members are present. 6. The meetings of the Arbitral Council may be held by any means of telecommunication. 7. The Arbitral Council shall reach its decisions by majority of its voting members. In case of deadlock, the vote of the meeting’s president shall prevail. 8. In case of urgency, the president of the Arbitral Council - or, if prevented, the deputy or the oldest member - may take any measures relating to the administration of arbitral proceedings that fall within the competence of the Arbitral Council, and then inform the Arbitral Council thereof at its next following meeting. 9. When the member of the Arbitral Council abstains, he/she shall leave the meeting whilst the discussion of the matter on which he/she is abstaining continues and any measures arising are agreed. The abstention will not affect the quorum necessary for the validity of the meeting.”

<sup>4</sup> Art. 8.2 of the UNCITRAL Arbitration Rules: “The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case: (a) The appointing authority shall communicate to each of the parties an identical list containing at least three names; (b) Within 15 days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which it objects and numbered the

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remaining names on the list in the order of its preference; (c) After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties; (d) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.”

<sup>5</sup> Art. 10.3 of the UNCITRAL Arbitration Rules: “In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authority shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.”

<sup>6</sup> Art. 13.4 of the UNCITRAL Arbitration Rules: “If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority.”

<sup>7</sup> Art. 14.2 of the UNCITRAL Arbitration Rules: “If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.”

<sup>8</sup> Art. 41.1 of the UNCITRAL Arbitration Rules: “The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.”

<sup>9</sup> Art. 41.3 and 4 of the UNCITRAL Arbitration Rules: “3. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If, within 45 days of receipt of such a referral, the appointing authority finds that the proposal of the arbitral tribunal is inconsistent with paragraph 1, it shall make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal. 4. (a) When informing the parties of the arbitrators’ fees and expenses that have been fixed pursuant to article 40, paragraphs 2 (a) and (b), the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated; (b) Within 15 days of receiving the arbitral tribunal’s determination of fees and expenses, any party may refer for review such determination to the appointing authority.”

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If no appointing authority has been agreed upon or designated, or if the appointing authority fails to act within the time specified in these Rules, then the review shall be made by the Secretary-General of the PCA; (c) If the appointing authority or the Secretary-General of the PCA finds that the arbitral tribunal's determination is inconsistent with the arbitral tribunal's proposal (and any adjustment thereto) under paragraph 3 or is otherwise manifestly excessive, it shall, within 45 days of receiving such a referral, make any adjustments to the arbitral tribunal's determination that are necessary to satisfy the criteria in paragraph 1. Any such adjustments shall be binding upon the arbitral tribunal. [...];”

<sup>10</sup> Art. 43.3 of the UNCITRAL Arbitration Rules: “If an appointing authority has been agreed upon or designated, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority, which may make any comments to the arbitral tribunal that it deems appropriate concerning the amount of such deposits and supplementary deposits.”

<sup>11</sup> Further information on the Centre are available at [www.camera-arbitrale.com](http://www.camera-arbitrale.com). Access to the Centre is provided from the moment any due fee is paid to the Chamber for its “Other services” to the closing of the case. Access to the library is by appointment only.

<sup>12</sup> The maintenance assists parties and arbitrators where copies may be required, and it becomes useful for the arbitrators when drafting orders and awards to check dates etc. Any photocopying is not included in the CAM fees.

<sup>13</sup> This provision applies to meetings as well.

<sup>14</sup> Hearings are hosted at the CAM premises in Milan, as well as at its branch office in Rome. Parties and arbitrators shall check hearing and break-out rooms' capacity and availability in advance with the Secretariat. Should a hearing take elsewhere, the Secretariat may arrange for rooms, while any costs shall be borne by the parties.

<sup>15</sup> Any travel expenses for the Secretariat attending hearings shall be borne by the parties.

<sup>16</sup> Clerical support at the hearing includes photocopying, sending fax and e-mails etc. Any coffee break or similar may be arranged by the Secretariat but any cost is excluded.

<sup>17</sup> I.e. video-conference facilities.

<sup>18</sup> I.e. Expenses include: transport, accommodation, meals and beverage. Any other expense is considered to be covered by the arbitrator' fee. Business class flights are refunded only for 2 hours or more. Car expenses are quantified according to established standards.

<sup>19</sup> The Secretariat can be contact to estimate any costs.

<sup>20</sup> The CAM Schedule of Fees is available at [www.camera-arbitrale.com](http://www.camera-arbitrale.com)

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[www.camera-arbitrale.com](http://www.camera-arbitrale.com)

via Meravigli 7 – 20123 Milan  
Tel: +39 02 8515.4666 – 4563 – 4524  
Fax: +39 02 8515.4516  
E-mail: [segreteria.arbitrato@mi.camcom.it](mailto:segreteria.arbitrato@mi.camcom.it)

Rome office  
Via Barnaba Oriani 34 – 00197 Rome  
Tel: +39 06 4203.4324  
E-mail: [cam.roma@mi.camcom.it](mailto:cam.roma@mi.camcom.it)  
[benedetta.coppo@mi.camcom.it](mailto:benedetta.coppo@mi.camcom.it)

