

## CHAMBER OF ARBITRATION OF MILAN (CAM)

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### I. BASIC INFORMATION

#### A. *History and Background of the Institution*

This chapter mainly focuses on the administration of arbitral procedures, which represents the “core business” of the Chamber of Arbitration of Milan (hereinafter “Chamber” or “CAM”). The report aims to offer an overview of the Chamber’s activity.

The Chamber of Arbitration of Milan is a branch of the local Chamber of Commerce. The dispute resolution services are one of the regulatory market functions that Italian law grants to the Chambers of Commerce (Law No. 580 of 1993). The CAM has been managing arbitral proceedings since 1986. It is the leading arbitral institution in Italy in terms of number of cases managed and international activity. Since 1996 it has also offered mediation services. Today, the Chamber offers an array of ADR tools further to arbitration and mediation, providing with online mediation ([www.risolvionline.com](http://www.risolvionline.com)). Arbitral proceedings are administered both in Milan and in Rome, where a branch office was established in 2014. Besides, CAM is involved in the resolution of .IT domain names disputes and is accredited by the Country Code Top Level Domain .IT Registry, the Italian authority that

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administers domain names and provides a list of dispute resolution centres for this type of disputes. Furthermore, the Chamber runs its services in arbitral cases conducted under the Procedure for UNCITRAL Arbitration Rules, and provides its Dispute Resolution Board Rules as an effective tool for the management of construction projects.

Next to its activity as ADR provider, the Chamber hosts the Studies and Documentation Centre “G.Schiavoni”, where a library focused on ADR and ODR is available and editorial activities on the same subjects are carried out. On the basis of its practice in the management of cases, CAM promotes training courses and seminars on arbitration and mediation where theory is combined with practice. The Chamber is also involved with several international associations concerned with the development of the ADR culture, such as IFCAI (International Federation of Commercial Arbitration Institutions), ITA (Institution for Transnational Arbitration), World Forum of Mediation Centers sponsored by UIA (Union Internationale des Avocats), and collaborates with distinguished arbitration centers. CAM has been hosting since 1989 the annual meeting of the Club of Arbitrators, a renowned association of experts and practitioners in the field of international arbitration which joins—as Observer—the UNCITRAL (United Nations Commission on International Trade Law) Working Group II on Arbitration and Conciliation. The activity carried out by CAM in the Mediterranean area is to be noted: the Chamber is the technical provider of ISPRAMED, the Institute for the Promotion of Arbitration and Conciliation of the Mediterranean that coordinates a network among the most representative arbitral institutions in the Mediterranean Basin in order to elaborate common principles in administering arbitrations and mediations and to ensure a shared system of commercial justice to the companies operating in the area.

As far as arbitration is concerned, the Chamber manages the proceedings under its Arbitration Rules (hereinafter “Rules”), which entered into force on 1 January 2010. The Rules apply to both domestic and international disputes. The parties’ autonomy is fully respected; the Rules set forth several provisions that integrate the parties’ will, while not hindering their own decisions.

The CAM Rules have proved to be flexible over years. In particular, there are neither gaps nor inconsistencies in the Rules since the Italian legislative reform of arbitration was enacted (reference is to the “2006 Reform,” legislative decree No. 40 of 2006), whereas the international best practices are mirrored in the Rules, and the numbers

of the cases managed by the CAM has been constantly increasing: from 118 new requests in 2008 (when this paper was first edited) to 134 in 2016.

The Rules shall apply where the arbitral clause, or other agreement between the parties, provide for them. A reference in the agreement to the Chamber of Arbitration of Milan or to the Chamber of Commerce of Milan shall be deemed to provide for the application of the Rules. The Rules shall apply also where (a) a party files a signed request for arbitration proposing arbitration under these Rules; and (b) the other party accepts this proposal by a signed statement within the time limit set by the Secretariat.

As far as the administration of the proceedings is concerned, the Chamber of Arbitration of Milan performs its tasks through the Arbitral Council and the Secretariat. Under the Preamble to the Rules, the Arbitral Council is defined as the technical body with competence over the most important matters related to the Rules' administration. In particular, the Council is in charge of appointment and challenging of the arbitrators, extensions of the limit for filing the final award and the determination of the costs of the proceedings. The Arbitral Council is chaired by its President and composed of a minimum of seven up to a maximum of eleven members, one sitting as deputy president. The Council's members are appointed for three years by the Board of the Chamber of Arbitration. The Board may appoint both Italian and foreign experts as members of the Arbitral Council. The meetings of the Arbitral Council are valid when attended by three members and they can be held by any means of telecommunication. The Council deliberates by majority of the attending members. The meetings are chaired by the Council's President or, if absent, by the deputy or, if both are absent, by its oldest member. In case of deadlock, the President has a casting vote.

In urgent cases, the President of the Arbitral Council may take any measures related to the administration of the proceedings that are within the Arbitral Council's competence. The Arbitral Council is informed thereof at its next meeting.

When a 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 does not affect the quorum necessary for the validity of the meeting.

The Secretariat is the administrative body providing assistance to the Arbitral Council, as well as to the arbitrators and the parties

during the proceedings. The Secretariat performs its tasks through the Secretary General, the deputy Secretary General and the case managers.

### ***B. Model Clause***

For parties who wish to refer a dispute arising under a contract or other act to institutional (administered) arbitration, the following arbitration agreement is recommended. The Chamber of Arbitration of Milan assists (at no cost) professionals, companies and other users in drafting these agreements. Further model clauses (*i.e.* tailored to international arbitration) are available in different languages at the CAM website [www.camera-arbitrale.com](http://www.camera-arbitrale.com).

### **MODEL Clause**

All disputes arising out of or related to this contract shall be settled by arbitration under the Rules of the Chamber of Arbitration of Milan (the Rules), by a sole arbitrator/three arbitrators, appointed in accordance with the Rules, which are deemed to be incorporated by reference into this clause.

### ***C. Arbitrators***

The Chamber plays an essential role regarding the constitution of the arbitral tribunal.

As far as the number of the arbitrators is concerned, the Arbitral Tribunal shall consist of a sole arbitrator or a panel of an uneven number of arbitrators (Art. 13). The Rules provide for the parties to agree on the number of the arbitrators. When the parties fail to reach an agreement, then a sole arbitrator shall decide the dispute. Nevertheless, the Arbitral Council may appoint a panel of three arbitrators when it deems it appropriate, taking into consideration the complexity of the case or the amount in dispute.

As to the appointment of arbitrators (Art. 14), the Rules respect the principle of the parties' autonomy. The parties are free to determine the way of appointment of the arbitrators. Unless otherwise agreed by the parties, the sole arbitrator is appointed by the Arbitral Council. Where the parties have agreed on the joint appointment of a sole arbitrator without fixing any time limit, then the Secretariat shall set it. If the parties fail to reach an agreement, the Arbitral Council appoints the sole arbitrator.

When the dispute is referred to a panel of arbitrators, then each party appoints an arbitrator. If a party fails to do so, the arbitrator shall be appointed by the Arbitral Council. As for the appointment of the chairperson of the tribunal, failing any different agreement of the parties, it is up to the Council to appoint him/her. However, the parties can provide for the chairperson be appointed by the two party-appointed arbitrators. Here again, if they do not reach an agreement, the chairperson is appointed by the Arbitral Council.

Where the parties have different nationalities or registered office in different countries, the Arbitral Council shall appoint as sole arbitrator or chairperson someone of a nationality other than those of the parties, unless otherwise agreed by the parties.

In case of multiparty arbitration, the Rules state that if the request for arbitration is filed by or against several parties, the Arbitral Council shall appoint the Arbitral Tribunal, notwithstanding any different provision in the arbitration agreement and regardless of any appointment made by any of the parties (Art. 15). The Arbitral Council shall appoint a sole arbitrator where (a) it deems it appropriate and (b) the arbitration agreement does not provide for a panel. Still, where the arbitration agreement provides for a panel and the several claimants and/or several respondents form into two sides at the outset of the dispute, each group appointing an arbitrator as if the dispute were between two parties, then the Arbitral Council shall appoint the chairperson only (unless the arbitration agreement refers the appointment of the whole panel or of the chairperson to a different appointing authority).

In 2016 CAM began to publish the names of the arbitrators appointed on its website. The published list makes reference to the appointing authority of each arbitrator, while parties' names and any other facts of the case are left out.

The Chamber devotes its attention to one of the most critical and delicate issues concerning arbitration, that is the independence of the arbitrators, regardless of the appointing authority (*i.e.*, the parties, or the Council or any other). According to the Rules, when accepting to serve, the prospective arbitrator must sign and forward to the Secretariat a statement of independence. Specifically, according to Art. 18, Para. 2, of the Rules, the arbitrators are requested to declare any present or past relationships with the parties or their counsel, or any other person or entity involved in the arbitration that may affect his/her impartiality or independence, and any kind of personal or financial interest—either direct or indirect—in the subject matter of

the dispute. Also, the arbitrator must respect the Code of Ethics (attached to the Rules), which lays down several additional provisions that an arbitrator shall follow accepting an appointment and throughout the entire course of the proceedings. When informing the prospective arbitrator of the appointment, the CAM Secretariat attaches to the statement of independence form the so called “filling in notes”: these notes are drafted by the Chamber with the aim of clarifying to the prospective arbitrator how to fill his/her statement, what to disclose, what to do in case of doubt etc. In the CAM practice, the notes have proved to be useful both for experienced arbitrators (to point out the Institution's position on the content of the statement) and beginners (not to leave them alone facing the blank form). Furthermore, the Secretariat attaches a copy of the IBA Guidelines on conflicts of interest too, for sake of good order and due notice of the prospective arbitrator, while clarifying that they are not binding for any decision of the Chamber.

The Chamber examines the content of the arbitrator's statement of independence. Then, the Secretariat confirms the arbitrator when (a) he/she files a statement of independence without disclosing any situation and (b) none of the parties submits any comment within ten days from receiving it. On the other hand, when the arbitrator discloses any circumstance, or any of the parties files any comment, then the Arbitral Council examines the statements and confirms (or does not) the arbitrator.

The parties can challenge the arbitrators—subject to the Arbitral Council's decision—grounded on any reason that could cast a doubt as to their independence and impartiality within ten days of receiving the statement of independence or becoming aware of the ground (Art. 19).

The Rules, as per Art. 20, set forth a number of cases where the arbitrators are replaced. In particular, if he/she violates any provision of the Code of Ethics, the arbitrator shall be replaced by the Institution, which may also refuse to confirm him/her in subsequent proceedings because of such a violation. The Secretariat may suspend the proceedings in case of replacement; in any case, when the suspension is lifted, the time limit set for filing the final award is extended to 90 days. The substituted arbitrator shall be appointed by the same entity that appointed the arbitrator who was replaced. If the substituted arbitrator must be replaced as well, the new arbitrator shall be appointed by the Arbitral Council. The Arbitral Council shall determine the fees, if any, due to the replaced arbitrator, taking into account

his/her activities and the ground for replacement. In case of replacement of the arbitrator, the new Arbitral Tribunal may decide whether all or some of the acts of the proceedings shall be repeated.

As for any reasoning of the CAM's decision on the independence of the arbitrator, the Rules do not provide for it, nor otherwise. In 2016 CAM began to publish its decisions on confirmation/challenge on its website in a sanitized version. Such a publication shows reasoning and provides comment of the CAM approach.

As for availability, it is worth noting that the CAM Code of Ethics (Art. 4 and 8) provides for the arbitrator to devote the due time and attention to the case, and the Secretariat officially attracts the arbitrator's attention to this very point when informing him/her of the appointment.

#### ***D. Costs, Fees and Other Service Charges***

The Rules offer the parties and the arbitrators a clear and predictable framework of the costs. According to the Rules, the Secretariat determines the value of the dispute, which is the sum of the claims filed by all parties (Art. 35) on the basis of the request for arbitration and statement of defence and any further indications of the parties and of the Arbitral Tribunal. The criteria to determine the value of the dispute are indicated in Annexe "A" to the Rules. The amount in dispute is referred to one of the baskets of the schedule to which arbitrators' and administrative fees correspond. The CAM schedule of fees is available at [www.camera-arbitrale.com](http://www.camera-arbitrale.com).

With regard to the predictability and the transparency of the costs, the Rules (Art. 36, Para. 4) expressly address the issue of fees and reimbursements of expenses of the arbitrators. There is a schedule of fees for the sole arbitrator, then there is another one in case of a panel. For each basket of the amount in dispute there are a minimum fee and a maximum fee. The Council determines the exact amount on a case-by-case basis. Where the proceedings end before the award is rendered, the Council may determine lower amounts than those provided as minimum in the schedule. Besides, fees below the minimum or exceeding the maximum may also be determined in exceptional cases.

When deciding on the costs, the Arbitral Council shall take into consideration the activities performed by the Tribunal, the complexity of the case, the duration of the proceedings and any other circumstance (Art. 36, Para. 6). The Arbitral Council shall make a final determination of the costs of the proceedings before the award is filed. The Arbitral

Tribunal shall be informed of the determination of the costs by the Arbitral Council and shall refer thereto in the decision on the costs in the award. The determination by the Arbitral Council does not affect the decision of the Arbitral Tribunal as to the apportionment of the costs among the parties.

Where the proceedings end before the Arbitral Tribunal is constituted, the Secretariat shall finally determine the costs of the proceedings.

Also, the fees of the Chamber are determined on the basis of the value of the dispute in accordance with the Schedule of Fees annexed to the Rules. In case of anticipated conclusion of the case, a lower fee may be determined. The list of included and excluded activities performed by the Chamber and covered by the fee are listed in Annexe "B" of the Rules.

## **II. ARBITRAL PROCEDURE BEFORE THE CHAMBER OF ARBITRATION OF MILAN**

### ***A. Commencement of Proceedings***

The arbitral proceedings start when a Request for arbitration is filed with the Secretariat. The Request is signed by the party or by its counsel with power of attorney. According to Art. 9, Para. 2, the said Request shall contain, among other, the parties' data, a description of the dispute and claims, as well as their economic value, the supporting evidence, the appointment of the arbitrator or any indications as to the number of arbitrators and the way of appointment, indications to the rules applicable to the proceedings and/or to the merits of the dispute, indications in regards to the seat and the language of the arbitration. Within five working days the Secretariat shall forward the Request to the Defendant, and the Defendant shall file its Statement of defence with the Secretariat within thirty days from receiving the Request. The Secretariat may extend the said time limit for justified reasons. Art. 10, Para. 2, provides for the Statement of defence to have the same content that the Request has; counterclaims, if any, can be filed in this statement.

As for the rules to be applied to the proceeding, Art. 2 set the following hierarchy: first come the CAM Rules themselves, as the rules chosen by the parties in their arbitration agreement, then any further rules agreed upon by the parties up to the constitution of the Arbitral Tribunal where consistent with the CAM Rules, and finally

the rules set by the Tribunal, provided that the due process principle and the equal treatment of the parties are applied in any case. As for the merits (Art. 3), the Arbitral Tribunal shall render its decision according to the rules of law agreed upon by the parties (*ex aequo et bono* decisions are admitted only where the parties so agreed); in case the parties failed to make any decision, then the Tribunal shall apply the rules that it considers appropriate, taking into account the nature of the relationship, the quality of the parties and any other relevant circumstance. According to Art. 21, the constitution of the Arbitral Tribunal shall be set in minutes indicating the seat and language of arbitration, the arbitrators' rules on the further steps of the proceedings and set time limits to conduct the case; the formal constitution of the Tribunal must take place within thirty days of receiving the acts forwarded by the Secretariat.

The Rules do not give the CAM any specific task to be performed along the proceedings, and the arbitrators are free to conduct it at their discretion. As clarified by Annexe "B" of the Rules, the Institution hosts the hearing at its premises at no additional cost, and its staff attends the hearing to take minutes. The CAM plays its role, if so required by the Rules, in other aspect of the proceedings; for example, when the parties do not define the seat of the arbitration, the Rules provide it to be Milan, unless the Arbitral Council fixes it elsewhere, where the parties so requested and/or any other relevant circumstances comes into consideration (Art. 4). Also, the Council renders a *prima facie* decision when any of the parties raises an exception as to the applicability of the Rules (Art. 11). The Secretariat, on the other hand, may order the stay of the proceedings if a party fails to pay the requested payments, and declare it concluded after one month (Art. 38, Para. 2 and 3).

The institution, however, has no power whatsoever with regard to joinder and consolidation of proceedings because these issues are referred to the arbitrators. The Tribunal has the power to order multiple proceedings pending before it to be consolidated, or disputes to be separated (Art. 22, Para. 3, 4 and 5 of the Rules), and to attempt to settle the dispute between the parties at any moment, including by addressing them to the Mediation Service of the CAM (Art. 22, Para. 1). Furthermore, Article 22 provides for the Arbitral Tribunal to issue all urgent and interim measures of protection, also of anticipatory nature, that are not barred by mandatory provisions applicable to the proceedings (Para. 2).

It has to be noted that, in Italy, arbitrators have no power to issue interim measures of protection, because the ability to issue such measures is granted only to the State Courts, unless otherwise expressly provided by the law (*i.e.*, Legislative Decree No. 5 of 2003, which provides a limited power for arbitrators to issue interim measures in corporate law disputes). The Rules grant such power to arbitrators in light of both the development of Italian national law and the transnational nature of arbitration, thus considering the possibility for the Rules to be applied by a Tribunal whose *lex fori* is in line with such a provision (that is to say, sitting in countries where the arbitrators' power to issue interim measures is recognized under the applicable national law).

The arbitrators may conduct the proceedings and taking of evidence at their own discretion and, except for legal evidence under applicable mandatory provisions, freely admit any types of evidence (Art. 25). The hearings are held in private, and the parties, the institution, the tribunal and the expert witnesses are required to keep confidential all information relating to the proceedings (Art. 8, Para. 1).

The Arbitral Tribunal may appoint one or more expert witnesses at its own initiative or upon request of one of the parties (Art. 26). The Tribunal may delegate the appointment of its expert to the CAM Arbitral Council. The Tribunal's expert is subjected to the duty of independence and impartiality set by the Rules and the Code of Ethics to the arbitrators, and the Institution takes care of the determination of the expert's fee and advance on costs (Art. 36.7). Once the evidence-taking phase is closed, before rendering the final award, the Arbitral Tribunal shall invite the parties to file their conclusion (Art. 28). This provision applies even when the Tribunal deems it appropriate to issue a partial and/or interim award (Art. 33).

The Arbitral Tribunal shall decide on the admissibility of any new claim, upon consultation with the parties and taking into account any circumstance, including the stage of the proceedings (Art. 27). In any case, once the evidence-taking phase is closed, the parties cannot file any new claim, nor plead new fact or submitting any new document/fact, unless the Tribunal so decides (Art. 28, Para. 3).

The Tribunal files the final award within six months from its formal constitution, unless otherwise agreed by the parties in the arbitration agreement (Art. 32). This time limit can be extended by the Secretariat in case of a joint request coming from the parties, or by the

Arbitral Council, when the request comes from one of the parties only, or from a member of the tribunal, or *ex officio* (Art. 32, Para. 2).

The award is deliberated with the participation of all the members of the Arbitral Tribunal and decided by the majority of them. The award must be in writing, undersigned by the arbitrators, and shall indicate the content set in Art. 30, Para. 2. When the panel is composed of three arbitrators, and either one of them refuses to sign or a signature cannot be obtained, then the award is valid when it is signed by the majority, and an explanatory note about the unavailability or the refusal must be added (Art. 30, Para. 1).

According to Art. 30, Para. 4, the arbitrators can submit a draft of the award to the Secretariat to review it for any non-compliance with the formal requirements set for in Art. 30.

The CAM may publish a sanitized version of the award, unless any of the parties objected to publication in the course of the proceedings, according to Art. 8, Para. 2.

### **III. APPENDIX**

#### ***A. Rules of the Chamber of Arbitration of Milan***

(See CD ROM)

#### ***B. Institution Contact Details***

##### **CHAMBER OF ARBITRATION OF MILAN**

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