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Arbitration in Italy – The New Rules of the Milan Chamber of Arbitration

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I. The Revision of the Rules

On March 1, 2019, the Milan Chamber of Arbitration ("CAM"), the leading Italian institution, managing 2/3 of the international arbitrations having their seat in Italy,¹ issued the revised Arbitration Rules² (the "Rules"), with the aim of providing for an even more efficient administration of arbitral proceedings. The original version of the rules, dating back to 2010, was already in line with the best international standards, however, the practice (CAM administered more than 1,200 cases since 2010) and recent developments in the arbitration practice (e.g., the impact of third-party funding) suggest to making some improvements in light of the experiences from other international arbitral institutions.

The main new features involve, on the one side, the powers of the Arbitral Tribunal with the new power of adopting provisional determination and the creation of the Emergency Arbitrator—inspired by the practice of the most internationally renowned arbitral institutions (e.g., ICC)—and, on the other side, the strengthening of the standard of transparency and impartiality of the entire arbitral procedure, especially with a provision regarding third-party funding.

II. Enhanced Power of the Arbitrators and Emergency Arbitrator

First of all, the Rules now grant the Arbitral Tribunal with the general power of adopting, at the request of a party, "any provisional determination with binding contractual effect on the parties (art. 26)."

The provision provides the parties with the possibility of requesting provisional measures that, yet not enforceable before a court, will bind them on a contractual basis. The private nature of these determinations reflects the role of the arbitrators as "private judges," that as such, according to Italian law, do not have coercive powers: nevertheless, the Rules provide a meaningful solution, attributing a binding character to these determinations, that could result, in case of non-performance, in damages for breach of contract, or be accompanied, when adopted, by a penalty.

In addition, aligning with the practice of the main arbitral institutions, the Rules introduce the Emergency Arbitrator. If a party so requests, prior to the confirmation of the Arbitral Tribunal that will decide on the merits of the dispute, CAM appoints an arbitrator that shall be able to provide the necessary interim or provisional measures in a very short time limit (less than 20 days, (art. 44)). This mechanism likely will prove to be particularly useful where the time required for the constitution of the Arbitral Tribunal could adversely and irremediably affect the position of the party, also taking into account that the application may be filed without prior notice to the other party. Nevertheless, the need of ensuring the due process of law continues to represent a central priority: in case of an ex parte order, a hearing is scheduled within a short time limit, in order to

give the arbitrator all the necessary elements to confirm, revoke, or modify the interim measure (art. 44 para. 4).

III. Third-Party Funding

For the first time, the Rules provide a specific provision with regard to third-party funding, a growing phenomenon in international arbitration that has been developing in Italy as well. Quite frequently, a party, usually the claimant, enters into an agreement with another party (usually professional litigation/arbitration funders) that undertakes the obligation of covering the procedural fees and the legal expenses, in exchange for a share of the arbitration proceeds, in case of an outcome in favor of the funded party. The development of the phenomenon has highlighted issues in terms of impartiality and independence of the Arbitral Tribunal, especially in terms of potential conflicts of interest. In fact, the funder has a clear economic interest in the arbitration, even if it is not a party to the proceedings from a strictly procedural point of view. Thus, issues of conflict of interests may arise with regard to the arbitrators, as the eventual relationships between them and the funder become relevant in the same way as the relationships between them and the parties. For this reason, the Rules provide for an increasing standard of transparency, requiring the funded party to disclose the existence and the identity of the funder (art. 43). In this view, the Rules aim at guaranteeing that the institution, as well as the parties, their counsels, and the Tribunal, are well aware of all the players and interests involved in the proceedings.

IV. Measures to Sanction “Guerrilla Tactics” and Unfair Conduct of the Parties

In order to ensure a fast and smooth conduct of the procedure, and to prevent parties’ tactical strategies that may delay the procedure itself (the so called “guerrilla tactics”), the Rules provide a specific provision with regard to “fair conduct” of the parties. Notwithstanding the fact that the arbitral procedure is mainly free from procedural constraints—or, at least, those characterizing the court proceedings—the institution shall ensure that the parties, their counsels and arbitrators act in good faith; therefore, the Rules now provide that the Tribunal consider the whole conduct of the parties when allocating the costs of the arbitration, sanctioning the party that has had a controversial behavior along the proceedings (for example, unreasonably challenging the Arbitral Tribunal, proposing excessive requests for documents disclosure, or raising specious objections at evidentiary hearings, etc., see (art. 9)).

V. Final Remarks

In times when international and domestic arbitration is sometimes criticized for not being as efficient, fast, transparent, and fair as it is expected to be, the revision of the CAM Rules—as well as similar measures adopted by arbitral institutions around the world (see, for instance, the Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration released by the ICC in January 2019)—prove the unique ability of the arbitration world to promptly adapt and improve itself, a feature that can hardly be found in State legal systems. Recent experience confirms that—especially in Italy where Court litigation is not particularly fast and efficient due to the huge workload of State Courts—arbitration is definitively the best option for the settlement of international disputes, and institutions like CAM are confirming their ability to provide services in line with the highest standards and the best practices of the international arbitration community.



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¹ See <https://www.camera-arbitrale.it/en/arbitration/arbitration-facts-figures.php?id=354>.

² See <https://www.camera-arbitrale.it/en/arbitration/arbitration-rules.php?id=64>.

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