

**INTERNATIONAL DISPUTE RESOLUTION OUTSIDE CHINA:  
PRACTICE AND PROCEDURE UNDER THE RULES  
OF VARIOUS INTERNATIONAL INSTITUTIONS**

*Beijing, 28<sup>th</sup> May, 2010*

**Arbitration Under The New Rules Of The Chamber Of Arbitration Of Milan  
And  
The Italy – China Business Mediation Centre**

*by*

*Giovanni De Berti, Milan, Italy*

**THE NEW ARBITRATION RULES OF THE CHAMBER OF ARBITRATION OF MILAN**

**Introduction**

The Chamber of Arbitration of Milan, the leading institution in Italy offering arbitration and Alternative Dispute Resolution services, recently issued a new edition of its Arbitration Rules, to take into account both recent changes of Italian arbitration law <sup>(1)</sup> and to reflect the modern trends of international arbitration <sup>(2)</sup>.

The Chamber of Arbitration of Milan was created in 1985, as a special agency of the Chamber of Commerce, Industry, Handicraft and Agriculture of Milan. According to its title, it began by providing arbitration services but, over the years, has enlarged its range of activities. Nowadays, it offers also mediation services, online dispute settlement services through the *Risolvionline* program and domain names reassignment. The needs of international operators are considered and accommodated through specific projects, particularly carried out in the Mediterranean countries, and in collaboration with the ICBMC (Italy-China Business Mediation Centre, see below), which focuses on disputes between Chinese and Italian companies. A fully staffed Research Centre provides training in, documentation on, and generally study, promotion and support for the spreading of an ADR culture for the settlement of commercial disputes.

Its arbitration rules were regularly updated over the years. Until 2003 the Chamber of Arbitration of Milan had different sets of Rules for domestic and international arbitrations. From 2004 the Rules were unified, applying to both kinds of arbitration proceedings. The new Milan Rules took effect on January 1<sup>st</sup>, 2010.

This revision was aimed at achieving an even faster and more effective system of dispute resolution, both through arbitration and mediation, assuring wide freedom in procedural matters to the arbitral tribunal and increased guarantee of confidentiality to the parties. It incorporates most of the UNCITRAL Arbitration Rules (1976), as currently revised by the Working Group II on International Arbitration and Conciliation <sup>(3)</sup>, to which representatives of the Chamber of Arbitration of Milan have actively participated.

---

<sup>1</sup> ) Italian arbitration law, contained in Articles 806 to 840 of the Code of Civil Procedure, was thoroughly amended in 2006, so as to bring it substantially in line with the UNCITRAL Model Law

<sup>2</sup> ) The English text of the Milan Rules can be found at [http://www.camera-arbitrale.it/Documenti/cam\\_arbitration-rules\\_2010.pdf](http://www.camera-arbitrale.it/Documenti/cam_arbitration-rules_2010.pdf)

<sup>3</sup> ) Draft Revised UNCITRAL Arbitration Rules, as at 5 March 2010

As in the past, the Milan Rules apply without distinction both to domestic and to international arbitrations.

## Functions and Structure

The Chamber of Arbitration of Milan manages both arbitration and mediation proceedings under its Rules, appoints arbitrators in *ad hoc* proceedings upon requests by the parties, and acts as appointing authority in accordance with the UNCITRAL Arbitration Rules. It is governed by a Board of Directors, overseen by an Arbitration Council and managed by the General Secretariat.

The **Arbitration Council**, of seven to eleven members, is appointed by the Board of Directors for a renewable term of three years among academics and practitioners of high renown in the arbitration field, both Italian and foreigner. It has general jurisdiction on all matters relating to arbitration proceedings and to issue the relevant rulings. The Rules provide for the flexible and speedy functioning of the Council, allowing for a quorum of only three members to adopt resolutions, the possibility of holding meetings by any form of telecommunication and easy ways for adopting urgent rulings in case of need. Its present Chairman is Vittorio Colesanti, professor of civil procedure at the Catholic University of Milan.

The **General Secretariat** is also appointed by the Board of Directors and performs all management and administrative functions either provided for by the Rules or delegated by the Arbitration Council, to which the Secretariat reports. Mr. Stefano Azzali has been Secretary General of the Chamber of Arbitration of Milan since 2001.

## General Provisions

Articles 1 to 8 of the Milan Rules, contain the general principles applicable to arbitration proceedings. They reflect and incorporate the accepted standards and best practices of international arbitration, with special reference to the UNCITRAL Arbitration Rules of 1976, as currently revised.

To avoid formal discussions on the application of the Milan Rules, no specific wording is required to that effect, the Rules applying if they are referred to by the parties by whatever expression, including mere reference to the Chamber of Arbitration or even to the Chamber of Commerce of Milan <sup>(4)</sup>.

A clear hierarchy of the **procedural rules** applicable to the arbitration proceedings is indicated. The arbitration shall be governed by the Milan Rules, and by rules agreed to by the parties before the commencement of the arbitration, *provided that they are consistent with the Milan Rules*. The arbitral tribunal can only fill the gaps left by the Milan Rules and by rules agreed by the parties, if any. In any event, each party must be treated with equality and be given a full opportunity to present its case <sup>(5)</sup>.

As to the choice of the **substantive law** to be applied to the dispute, in the absence of the parties' choice, and unless the parties have expressly provided that the Arbitral Tribunal shall decide as *amiable compositeur*, a wide discretion is granted to the Arbitral Tribunal. The Tribunal shall apply the *rules it determines to be appropriate* taking into account the nature of the relationship, the qualities of the parties and any other relevant circumstances <sup>(6)</sup>. Such provisions, that supersede the reference to the law with which the subject matter of the dispute has its closest connection, adopted in the previous formulation of the Milan Rules, is in line with the draft revised

---

<sup>4</sup> ) Art. 1

<sup>5</sup> ) Art. 2

<sup>6</sup> ) Art. 3

UNCITRAL Rules <sup>(7)</sup> and the rules of other important arbitral institutions <sup>(8)</sup>.

The place of arbitration may be either in Italy or abroad, as chosen by the parties. Lacking such choice, the seat of the arbitration shall be Milan, but the Arbitral Tribunal can fix it elsewhere, having regard to the requests of the parties and to any other circumstances. In addition, the Tribunal can meet at any other place it considers appropriate <sup>(9)</sup>.

Terms established by the Rules or by the Tribunal shall not be deemed to be final deadlines unless expressly defined as such. Even in this case, they may be extended, either upon agreement by all parties or on justified grounds <sup>(10)</sup>.

An important innovation of the Milan Rules is the extension to the parties themselves of the duty of confidentiality with regard to the proceedings and the award, except when the award has to be used to protect the rights of the person concerned <sup>(11)</sup>. Previously, the duty of confidentiality did bind the Chamber of Arbitration, the Arbitral Tribunal and the expert witnesses, but not the parties.

### **The Commencement of the Proceedings**

The provisions of the Milan Rules relating to the arbitral proceedings have not been the object of significant changes with regard to those of 2004. Indeed, they were already in line with generally accepted rules and practices in international arbitration.

Any objection as to the existence, validity or effectiveness of the arbitration agreement, or as to the jurisdiction of the Arbitral Tribunal, must be raised in the first brief or at the first hearing following the claim to which the objection relates. This is actually a mandatory deadline, and objections not timely raised shall be deemed as waived <sup>(12)</sup>. Any objection raised before the constitution of the Arbitral Tribunal is decided by the Arbitral Council: however its decision is not binding on the Arbitral Tribunal, that has always the final say <sup>(13)</sup>.

### **The Arbitrators**

The number of arbitrators should be determined by the parties. Failing this, 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. 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 <sup>(14)</sup>.

When, according to the Milan Rules, 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, the Arbitral Council shall appoint a person of a nationality other than those of the parties, unless otherwise agreed by the parties themselves.

The provisions concerning the formation of the Arbitral Tribunal were slightly reformulated in order to further increase transparency. The designated arbitrators have to submit a statement of independence, where they must disclose any relationship, not only with the parties or their counsel,

---

<sup>7</sup> ) Art. 35 (as at 5 March 2010)

<sup>8</sup> ) ICC Rules, Art. 17; ICDR Rules, Art. 28; LCIA Rules, Art. 22.3; Stockholm (SCC) Rules, Art. 22

<sup>9</sup> ) Art. 4

<sup>10</sup> ) Art. 7

<sup>11</sup> ) Art. 8; see CIETAC Rules, Art. 33; ICDR Rules, Art. ; LCIA Rules, Art. 30; Stockholm (SCC) Rules, Art. 46.

<sup>12</sup> ) Art. 12

<sup>13</sup> ) Art. 11

<sup>14</sup> ) Art. 13

but also with **any other person or entity involved in the arbitration** which may affect their impartiality or independence <sup>(15)</sup>.

Among the usual grounds for replacement of arbitrators (resignation, challenge etc.), the Milan Rules include now the case in which the arbitrator is removed by all parties, so as to avoid all possible situations of a stalemate. In case of removal of an arbitrator, the Secretariat may suspend the proceedings. In any case, when the suspension is lifted, the time limit for filing the award is extended to 90 days, if, by the passage of time during the suspension, said time limit is less than 90 days <sup>(16)</sup>.

## The Proceedings

The provisions relating to the conduct of the arbitration were revised to facilitate a reasonably quick resolution of the dispute and assure the effectiveness of the procedure. To this end the Arbitral Tribunal has been granted increased case managing functions, namely:

- When the Arbitral Tribunal is constituted, it shall set immediately the further steps and time limits to conduct the proceedings <sup>(17)</sup>,
- At any time during the proceedings the Arbitral Tribunal may attempt to settle the dispute between the parties, including by addressing them to the Mediation Service of the Chamber of Arbitration of Milan <sup>(18)</sup>;
- The Arbitral Tribunal may issue all urgent and provisional measures of protection, even of anticipatory nature, provided that they are not barred by mandatory provisions applicable to the proceedings <sup>(19)</sup>;
- Where multiple proceedings are pending before the Arbitral Tribunal, the Tribunal may order their consolidation, if it deem they to be connected <sup>(20)</sup>;
- Where the same proceedings concern several disputes, the Arbitral Tribunal may order their separation <sup>(21)</sup>;
- If a third party requests to join a pending arbitration or if one of the parties seeks a third party's intervention, the Arbitral Tribunal shall decide the application after consulting the parties, taking into consideration all the relevant circumstances of the case <sup>(22)</sup>;
- If a party files new claims during the proceedings, their admissibility shall be decided by the Arbitral Tribunal after consulting the parties and taking into account all circumstances, including the stage of the proceedings <sup>(23)</sup>;
- By way of exception, the Arbitral Tribunal may decide to admit the parties to file new claims, plead new facts, submit new documents or propose new evidence even if the phase of the

---

<sup>15</sup> ) Art. 18

<sup>16</sup> ) Art. 20

<sup>17</sup> ) Art. 21.3

<sup>18</sup> ) Art. 22.1

<sup>19</sup> ) Art. 22.2. Actually, at the moment Italian procedural provisions do not allow arbitrators to issue interim measures, except in very limited cases of corporate disputes.

<sup>20</sup> ) Art. 22.3

<sup>21</sup> ) Art. 22.4

<sup>22</sup> ) Art. 22.5

<sup>23</sup> ) Art. 27

taking of evidence is closed <sup>(24)</sup>.

## **The Award**

With regard to the Milan Rules on the deliberation of the award, set forth in articles 30-34, only very few provisions needed revision. Thus, the deliberation of the award does no longer require a personal conference of the Arbitral Tribunal; the Arbitral Tribunal may issue one or more awards including awards of a partial or interim nature; the time limit to render the award was confirmed of six months from the constitution of the Tribunal. Actually, this term can be extended either by the Secretariat with the agreement of both parties or ex officio by the Arbitral Council. Perhaps it is due to the keeping of this - admittedly short - term and to the spare granting of extensions that the average length of arbitration proceedings before the Chamber of Arbitration of Milan over the last six years (2004 to 2009) has been kept to 12.8 months <sup>(25)</sup>. It is the aim of the new Milan Rules to further improve these statistics.

## **Conclusion**

The new Milan Rules make the Chamber of Arbitration of Milan fully competitive in the international arbitration arena, thanks to the increased rapidity of the proceedings, the effective control on the impartiality and independence of the arbitrators, the extension of the duty of confidentiality to the parties and the ample opportunity for the parties to adapt procedural rules to their needs.

Conversely, the reinforcement of the case management powers of the Arbitral Tribunal in the conduct of the proceedings, e.g. on the choice of law, the manner of taking evidence or the admission of new claims, will allow the Tribunal to adopt a more balanced and flexible approach to the proper determination of the issues, without sacrificing reasonable expedition.

The Milan Rules support the claim of the Chamber of Arbitration of Milan to be considered a convenient seat of international arbitration for both Italian and foreign parties, counsels and arbitrators.

## **THE ITALY-CHINA BUSINESS MEDIATION CENTER – ICBMC**

The Italy-China Business Mediation Center (ICBM) for the resolution of commercial disputes among Italian and Chinese companies, was set up following a cooperation agreement signed on 7 December 2004 between the Italy-China Chamber of Commerce, the Chamber of Arbitration of Milan and the Mediation Center of the China Council for the Promotion of International Trade (CCPIT) of Beijing.

The ICBMC became operational in November 2005 and was the first bilateral mediation centre serving commercial dispute resolution needs between a major European country and China. It is a bilateral entity, with two offices, two Chairmen and two Secretaries General, one in Beijing and one in Milan.

The purpose of the creation of the ICBMC was to capitalize the experiences of leading providers of mediation services in both countries. The complexity of the commercial relationships between the two countries, which have intensified exponentially over the last decades, requires an expertise in how to manage disputes rapidly, confidentially and inexpensively.

The ICBMC offers such opportunity thanks to its dual nature, providing mediation services to entrepreneurs operating between Italy and China. Namely, the Center

---

<sup>24</sup> ) Art. 28.3

<sup>25</sup> ) Chamber Arbitration of Milan, Facts & Figures, at [http://www.camera-arbitrale.it/Documenti/arbitration\\_stat\\_2009-en.pdf](http://www.camera-arbitrale.it/Documenti/arbitration_stat_2009-en.pdf)

- makes it possible to deal with complex issues in a collaborative and informal manner aimed at satisfying the parties' real interests;
- provides a neutral venue where the parties to a dispute can discuss their mutual problems in private;
- provides qualified professionals specifically trained to mediate commercial disputes, namely Italian-Chinese disputes;
- is available to enterprises in Italy and China, to assist the parties at every stage of the mediation;
- contributes towards preserving and developing commercial relationships between the two countries, by spreading the knowledge and use of mediation as a tool for overcoming cultural and legal differences.

The ICBMC standard mediation clause is as follows:

*"Parties agree to submit all disputes arising in connection with this agreement to the mediation attempt managed by the Italy-China Business Mediation Center at the Chamber of Arbitration of Milan for the Italian side and the Mediation Center of China Council for the Promotion of International Trade in Beijing for the Chinese side to solve the dispute with a mediation agreement in accordance with the Rules adopted by the same ICBMC"*

Since its beginnings, a great number of Italian firms and companies dealing with China have inquired about and inserted this clause in their contracts.

The Mediation Rules of the ICBMC respect the fundamental features of mediation: voluntary participation, informality, confidentiality, and the presence of a neutral, independent and impartial third party capable of steering the parties towards a mutually acceptable solution in a timely and inexpensive manner. In all regards, the Rules compare favourably with those of other well-established mediation centres.

The Rules are rather simple, flexible and informal. They expressly provide that all information relating to the mediation proceedings shall be kept confidential by the mediator(s), the Center, the parties and all the participants involved in the mediation process, except where disclosure is required under the applicable law <sup>(26)</sup>. The parties will select the mediator from the Center's Panel of Mediators and choose the venue of the meetings between Beijing and Milan: in certain cases, meetings have been held, alternatively, in both cities. The sessions may be conducted in Chinese, Italian or English.

Mediation begins by filing a simple Submission Form with either the Milan or Beijing Secretariat <sup>(27)</sup>. If the other party agrees to mediate the dispute, both parties proceed to select a mediator, on the basis of background information provided by the ICBMC. In view of the bilateral nature of the Center, *"the parties shall decide through consultation whether they seek a single mediator or a joint team of one Chinese and one Italian mediator"* <sup>(28)</sup>; however, in certain cases, a mediator from a third country has been appointed. In any event, the parties choose their mediator(s) from the ICBMC's Panel of Mediators, thus ensuring the selection of mediators specifically trained to manage commercial disputes, namely Italian-Chinese disputes.

After the selection of the mediator or mediators, as the case may be, the mediation begins in earnest. As it is normal in these proceedings, the mediator must actively facilitate the resolution of the dispute, including by meeting with the parties individually, so that sensitive commercial issues may be broached openly and confidentially. The mediator's may appoint experts (when

---

<sup>26</sup> ) Art. 9

<sup>27</sup> ) Art. 3

<sup>28</sup> ) Art. 4.1

needed, and with the consent of the parties), demand production of additional evidentiary materials, and must always observe the ICBMC Ethical Code of Conduct for Mediators (<sup>29</sup>).

The Code of Conduct provides, inter alia, that mediators are to be “*properly trained and shall maintain and update their education and practice in mediation skills. Mediators shall refuse appointment to a mediation for which they are not qualified*” (<sup>30</sup>). This enduring obligation is fundamental to the continued success of the Center, as a necessary step towards ensuring the future excellence of the class of ICBMC mediators and fostering continued confidence in the Center by both Italian and Chinese companies.

**Giovanni De Berti**

*MCI Arb, FCI Arb (Mediation)*

*Avvocato in Milan, Italy*

*Of Gray's Inn, barrister (non practising)*

*ICBMC accredited mediator*

[g.deberti@dejalex.com](mailto:g.deberti@dejalex.com)

---

<sup>29</sup> ) Art. 6

<sup>30</sup> ) Code of Conduct, Art. 1