

Arbitration - Italy

New rules for Milan Chamber of Arbitration

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Introduction

The Milan Chamber of Arbitration, the leading Italian institution for arbitration and other alternative dispute resolution services, has issued a new edition of its arbitration rules to reflect recent changes in Italian arbitration law⁽¹⁾ and modern trends in international arbitration.⁽²⁾

The Milan Chamber of Arbitration was created in 1985 as a special agency of the Milan Chamber of Commerce, Industry, Handicraft and Agriculture. It began by providing arbitration services, but has since widened its range of activities. It now offers mediation services, online dispute settlement services (through the RisolviOnline programme) and domain name reassignment. Specific projects, mainly conducted with other Mediterranean countries, cater for the needs of international operators. The Italy-China Business Mediation Centre focuses on disputes between Chinese and Italian companies (for further details please see "[Where East meets West: the Italy-China Business Mediation Centre](#)"). A research centre provides training in and documentation on alternative dispute resolution, as well as general educational resources, promotion and support for the development of alternative methods of resolving commercial disputes.

The new set of rules took effect on January 1 2010. The revision was aimed at creating a faster and more effective system of arbitration and mediation, giving tribunals greater procedural freedom and providing parties in dispute with a stronger guarantee of confidentiality. The new rules incorporate most of the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules 1976, as revised by Working Group II on International Arbitration and Conciliation (in which representatives of the Milan Chamber of Arbitration participated). The Milan Rules continue to apply without distinction to domestic and international arbitration, as they have done since 2004.

Functions and structure

The Milan Chamber of Arbitration:

- manages arbitration and mediation proceedings under its rules;
- appoints arbitrators in *ad hoc* proceedings at the parties' request; and
- acts as the appointing authority in accordance with the UNCITRAL Arbitration Rules.

The body is governed by a board of directors, overseen by the Arbitration Council and managed by a secretariat.

The council comprises between seven and 11 members. They comprise academics and renowned Italian and foreign arbitration practitioners, and sit for renewable three-year terms. The council has general jurisdiction over all matters relating to arbitration proceedings and is empowered to issue the relevant rulings. The rules allow it to act promptly and flexibly. A quorum of three members can adopt resolutions; moreover, meetings can be held using any form of telecommunication and simplified procedures

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allow urgent rulings to be issued quickly. The chairman is Vittorio Colesanti, professor of civil procedure at the Catholic University of Milan.

The secretariat is also appointed by the board and performs all management and administrative functions that are set out in the rules or delegated to it by the council (to which the secretariat reports). Stefano Azzali has been secretary general since 2001.

General provisions

Articles 1 to 8 of the rules contain the general principles applicable to arbitration proceedings. They reflect and incorporate accepted standards and best practices in international arbitration.

In order to avoid disputes about the applicability of the Milan Rules, no specific wording must be used when referring a dispute to arbitration thereunder. Thus, the rules apply if the parties refer to them in any way - a reference to 'the Milan Chamber of Arbitration' or 'the Milan Chamber of Commerce' is sufficient.⁽³⁾

The rules set out a clear hierarchy of procedural rules for arbitral proceedings. An arbitration is governed by the Milan Rules and by any other rules to which the parties have agreed before the commencement of the arbitration, provided that the latter are consistent with the Milan Rules. The tribunal can only fill the gaps left by the Milan Rules and other agreed rules. Each party must be treated equally and must be given an opportunity to present its case fully.⁽⁴⁾

If the parties have not chosen the applicable substantive law - and unless the parties have expressly provided that the arbitral tribunal shall decide as an *amiable compositeur* (ie, according to general principles of equity) - the tribunal has broad discretion. It shall apply the rules that it deems appropriate, taking into account the nature of the parties and the relationship between them, as well as other relevant circumstances.⁽⁵⁾ The previous version of the rules referred to the law with which the subject matter of the dispute is most closely connected, but the new provisions supersede this approach in line with the draft revised UNCITRAL Arbitration Rules and the rules of other leading arbitral institutions.

The parties may choose a place of arbitration in Italy or abroad. If no choice is made, the seat of the arbitration is Milan, but the tribunal can choose a different location, having regard to the parties' requests and other circumstances. In addition, the rules provide that the tribunal can meet wherever it considers appropriate.⁽⁶⁾

Terms established by the rules or the tribunal are not final deadlines unless they are defined as such. Even if they are so defined, they may be extended either with the parties' agreement or on reasonable grounds.⁽⁷⁾

A significant innovation extends the duty of confidentiality with regard to the proceedings and the award to the parties themselves, except when the award must be used to protect the rights of the party concerned.⁽⁸⁾ Previously, the duty of confidentiality bound the arbitral institution, as well as the tribunal and the expert witnesses, but not the parties.

Commencement of proceedings

The provisions on commencement of proceedings have not changed significantly, as the 2004 rules were already consistent with generally accepted rules and practices in international arbitration.

An objection to the existence, validity or effectiveness of the arbitration agreement or to the tribunal's jurisdiction must be raised in the first brief or at the first hearing following the claim to which the objection relates. This is a mandatory deadline - objections raised out of time will be waived.⁽⁹⁾ An objection raised before the tribunal has been constituted must be decided by the council; however, the council's decision is not binding on the tribunal, with which the final decision rests.⁽¹⁰⁾

Arbitrators

The parties are responsible for determining the number of arbitrators. If they fail to do so, a sole arbitrator will hear the dispute, unless the council considers that a panel of three arbitrators is appropriate in view of the dispute's complexity or economic value. If the arbitral agreement provides for an even number of arbitrators, the council must appoint an additional arbitrator, unless the parties agree otherwise.⁽¹¹⁾

If the sole arbitrator or the chairman of the tribunal is appointed by the council, and if the parties are of different nationalities or have registered offices in different countries, the council must appoint a person of a different nationality from the parties, unless the parties agree otherwise.

The provisions concerning the formation of the tribunal have been slightly reformulated

in order to increase transparency. Designated arbitrators must submit a statement of independence in which they disclose any relevant relationship - not only with the parties or their counsel, but also with any other person or entity involved in the arbitration - that could affect their impartiality.⁽¹²⁾

In addition to the usual grounds for replacing arbitrators (eg, where an arbitrator resigns or his or her position is challenged), the rules now provide for the removal of an arbitrator by all parties in order to avoid a possible stalemate. In the event of an arbitrator's removal, the secretariat may suspend proceedings. Once the suspension is lifted, the time limit for filing an award is extended to 90 days if, as a result of the suspension, the time limit would otherwise be less than 90 days.⁽¹³⁾

Proceedings

The provisions relating to the conduct of arbitration have been revised to facilitate prompt dispute resolution and to ensure that the procedure is effective. To this end, the tribunal has been assigned the following case management functions:

- Once the tribunal has been constituted, it must immediately determine further steps and time limits for the conduct of proceedings.⁽¹⁴⁾
- At any time during the proceedings, the tribunal may attempt to settle the dispute between the parties - among other things, it may refer them to the mediation service of the Milan Chamber.⁽¹⁵⁾
- The tribunal may issue all necessary urgent and provisional protection measures, including preventive measures, provided that such measures are not barred by the mandatory provisions applicable to the proceedings. At present, Italian procedural provisions do not recognise interim measures issued by arbitrators, except in limited circumstances in corporate disputes; however, they could be enforced abroad where the local law recognises them.⁽¹⁶⁾
- Where multiple proceedings are pending, the tribunal may consolidate them if it deems them to be connected.⁽¹⁷⁾
- Where the same proceedings concern several disputes, the tribunal may order their separation.⁽¹⁸⁾
- If a third party seeks to join a pending arbitration or if one of the parties seeks to join a third party, the tribunal must decide the application after consulting the parties, taking into consideration all of the relevant circumstances of the case.⁽¹⁹⁾
- If a party files new claims during the proceedings, the tribunal must decide on their admissibility after consulting the parties and taking all relevant circumstances into account, including the stage that the proceedings have reached.⁽²⁰⁾
- The tribunal may exceptionally decide to allow the parties to file new claims, plead new facts, submit new documents or propose new evidence, even if the evidence-taking phase is closed.⁽²¹⁾

Award

Articles 30 to 34 cover arbitral awards. Few provisions needed revision, but certain elements are significant. The rules provide that:

- arbitrators need no longer deliberate on the award in person;
- a tribunal may issue one or more awards, including partial and interim awards; and
- the time limit for rendering an award is confirmed as six months from the tribunal's formation.

The time limit for an award can be extended by the secretariat (with the agreement of both parties) or on the council's initiative. The retention of this relatively short time limit since the last revision of the rules in 2004 and the sparing use of extensions helped to keep the average length of proceedings between 2004 and 2009 at under 13 months. The new rules seek to improve this statistic.

Comment

The new rules make the Milan Chamber of Arbitration fully competitive with international arbitration venues, mainly thanks to:

- the provisions for faster proceedings;
- the effective monitoring of arbitrators' impartiality and independence;
- the extension of the duty of confidentiality to the parties; and
- the ample scope for parties to adapt procedural rules to their needs.

The reinforcement of the tribunal's case management powers - for example, on the choice of law, the taking of evidence and the admission of new claims - should allow the tribunal to adopt a more balanced and flexible approach to determination without sacrificing reasonable expediency.

The new rules support the Chamber of Milan's claim to be considered an appropriate institution of international arbitration by both Italian and foreign parties, counsel and arbitrators.

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Endnotes

(1) The Italian arbitration regime, set out in Articles 806 to 840 of the Code of Civil Procedure, was thoroughly amended in 2006 to bring it substantially into line with the UNCITRAL Model Law.

(2) The English text of the rules can be found at www.camera-arbitrale.it/Documenti/cam_arbitration-rules_2010.pdf.

(3) Article 1.

(4) Article 2.

(5) Article 3.

(6) Article 4.

(7) Article 7.

(8) Article 8.

(9) Article 12.

(10) Article 11.

(11) Article 13.

(12) Article 18.

(13) Article 20.

(14) Article 21(3).

(15) Article 22(1).

(16) Article 22(2).

(17) Article 22(3).

(18) Article 22(4).

(19) Article 22(5).

(20) Article 27.

(21) Article 28(3).

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