

## NEW RULES OF CAM SANTIAGO ENTER INTO FORCE

On April 1st, 2021, the Domestic Arbitration New Rules (“New Rules”) of the Arbitration and Mediation Centre of Santiago’s Chamber of Commerce (“CAM Santiago”) came into force.

The New Rules, which aims to reflect new trends regarding administrative and procedural practices in arbitration proceedings, as well as the experience of foreign Arbitration Centres, presents the following updates:

### **Principles of autonomy, flexibility, celerity, and procedural economy:**

- Express recognition and regulation of the “Arbitration Request” filing.

The information included in such Request regarding the monetary value and subject of the future lawsuit will determine the applicable proceeding (regular proceeding or the new “Abbreviated Proceeding”), as well as the designation of the most suitable Arbitrator to decide the dispute.

- Unless otherwise stipulated in the arbitration clause, the appointment of the Arbitrator by consent of both parties is enhanced. Only if this agreement cannot be reached, the appointment is made by the CAM Santiago.
- The Arbitral Tribunal has jurisdiction over the entire country to perform all the procedural diligences that deems appropriate. This has impact on rogatory letters.
- The parties may agree the arbitration to be conducted in a foreign language.
- Duration: the term of the arbitration is set at one year, and February will no longer be considered a non-business month. Also, the parties are entitled to agree suspensions to the arbitration term.
- The e-mail notifications will continue to be the general rule and the personal notification for the first resolution will no longer be required if the parties have appeared in the pre – arbitration stage.
- Injunctions: the New Rules establish that within the term given by the Ordinary Court once the measure is granted, the party must (i) file

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the Arbitration Request, (ii) request the maintenance of the measure and (iii) file the arbitration lawsuit. It is expressly recognized that requesting Ordinary Courts for injunctions before the constitution of the Arbitral Tribunal, does not mean a disregard of the arbitration clause.

- Incorporation of causes for the Arbitrator to terminate his duties or resignation.
- Remedies regime: by the submission to the New Rules, all remedies are waived. When remedies are admitted, the jurisdiction of the CAM Santiago Arbitration Court of Appeal is encouraged.
- Evidentiary term: the Arbitrator is now entitled to request documents and evidence's summary. The concept of "party statement" is recognized, giving the possibility to replace the "absolución de posiciones" for a less rigid and more useful diligence.
- Incorporation of an "Abbreviated Proceeding": this proceeding is applicable, by default, in cases where the amount of the main claim does not exceed 2.000 U.F. (USD \$83,000 approx.), and the amount of the counterclaim, if any, does not exceed 5.000 U.F. (USD \$207,000 approx.). If the amount is higher, the parties may also agree to submit to this proceeding, which is conducted before one of the Arbitrators included in the list of Young Arbitrators of the CAM Santiago, has a 4-month duration, and has a single hearing for conciliation and evidentiary points establishment.

#### **Use of technology:**

- The parties must use the technology means of the CAM Santiago. All the evidentiary hearings can be handled through electronic systems such as, video conference or others means of communication, compatible with CAM Santiago system's and able to be incorporated to the electronic case record.

#### **Procedural good faith, conflicts of interest management, confidentiality, and procedural economy:**

- The arbitration clause must be in writing, either in a contract or in other document or written communication between the parties (physical or electronic media).
- The independence of the arbitration clause is established. Therefore, the nullity of the contract may not affect the validity of the arbitration clause.
- The arbitration awards will become public after one year from its

enforcement. This, with certain exceptions, such as the opposition of one of the parties.

- A limiting liability rule for Arbitrators, CAM Santiago Council and its officers is incorporated. They will only be liable for gross negligence or malice.
- A new arbitrator fee determination can be made during the award enforcement. This is particularly relevant when the discussion of the amount and nature of the damages is held for the award enforcement, according to article 173 of the Chilean Civil Procedural Code.
- Cost's determination: the concept of "reasonable reimbursement" of costs incurred by one party is introduced in the New Rules. When deciding on costs, the Arbitrator must consider the circumstances of the case, including the arbitration result and the party's procedural conduct.

The New Rules' complete text is available on the following [link](#).