

Milan and Santiago Arbitral Institutions adopt Dispute Boards

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On January 1, 2016 the Milan Chamber of Arbitration (“Milan CAM”), issued Rules for Dispute Boards (“Milan Rules”) exactly one year after the Arbitration and Mediation Center of the Santiago Chamber of Commerce (“CAM Santiago”) did so in Chile (“Santiago Rules”). Milan CAM has around 950 mediation filings per year and over 130 arbitration proceedings each year. According to the current statistics, CAM Santiago manages over 250 arbitral cases per year, 21 per cent of which are construction arbitrations. Both entities are therefore prominent institutions in alternative dispute resolution in their respective countries and any new procedures put forward by them are worth consideration.

Types of DBs

The Milan Rules’ aim is to focus on dispute prevention. The boards are called Dispute Resolution Boards. The Board issues what are described as recommendations- although they are binding if not challenged within 30 days.

The Santiago Rules on the other hand, following the ICC approach, allow for all three types of DB: Dispute Review Board (DRB) issuing non-binding recommendation, Dispute Adjudication Board (DAB) issuing binding decision or Combined Dispute Board (CDB) issuing decision or recommendation. A CDB can only issue a Decision, without both parties consent, a) for reasons of urgency or other relevant causes,(for example, a Decision can simplify a contract’s performance or prevent significant harm being caused to any of the parties); b) if a Decision would prevent interruption of the contract; or c) if a Decision is required to preserve evidence.

Appointment of DBs

Milan CAM states it will promote the use of DBs in long-term contracts in general and in those contracts which involve multiple interfaces.

Milan CAM took a leading position in identifying dispute board members and published a first short list of potential DRB members to start a debate in Italy among the stakeholders. This list is composed of both local and international practitioners, including lawyers and engineers.

By Legislative Decree n. 50/2016, Italy also recently introduced a “legal board” concept as an ADR tool in public tenders whereby such “legal board” members may issue “proposals for resolution” of

disputes and should such proposals be accepted and signed by the parties, it becomes a binding document. This is in effect another form of dispute board in the early stages of a project.

CAM Santiago will appoint DB members from two lists: first, its arbitrators' roster; and second, a list of approved technical experts. CAM Santiago keeps a roster for domestic arbitration only made up of local lawyers, while in international arbitration the appointments are made on an ad-hoc basis. However, Article 20 of the CAM Santiago Bylaws allows for temporary incorporation of external arbitrators. It is assumed that this provision can be used for DB appointments as well. The list of technical experts, has not been established yet. CAM Santiago is working on it in collaboration with the Chilean Construction Chamber. There is no limitation in the Santiago Rules regarding nationality or profession of the technical experts. According to the information shared by CAM Santiago, first references to Santiago Rules, have already been written into some construction contracts.

Other Features

Under Milan Rules, the DB does not have any authority to unilaterally extend its term, for example, to allow it to issue a pending recommendation. The term may only be extended by both parties' agreement. Santiago Rules take the same approach. This feature is in contrast with ICC dispute board rules where boards have a discretion to extend their terms.

It will certainly be interesting to monitor the progress made by each of these institutions both in how often they are asked to appoint and to what extent they embrace a wider disciplinary and regional selection than traditional arbitration appointments.