

Kluwer Arbitration Blog

Interviews with Our Editors: In Conversation with Macarena Letelier Velasco, Executive Director of the Center for Arbitration and Mediation of Santiago – CAM Santiago

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Welcome to the Kluwer Arbitration Blog, Ms. Letelier! We are grateful for this opportunity to learn more about the [Center for Arbitration and Mediation of Santiago](#) (“CAM Santiago” for its initials in Spanish), and its administration of complex disputes, as well as about the attractiveness of Santiago as seat for international arbitration.

1. To start, can you briefly introduce yourself and explain your role at CAM Santiago?

Thank you very much for this invitation to discuss CAM Santiago. First, I would like to start off by saying that I am a mother of three boys, a lawyer with a Master’s degree in Public Law from the University of Chile and, since 2014, the Executive Director of CAM Santiago. Previously, I served as a Prosecutor for the Chilean Ministry of Economy.

I have two main responsibilities as Executive Director of CAM Santiago – apart from my core duty, which focuses on leading our team at the center. The first one consists on promoting and/or strengthening our relations with other local and international institutions, such as universities, ministries, and other arbitration centers. The second comprises leading the development of new projects that keep CAM Santiago at the forefront of innovation, for example, developing digital platforms for e-commerce, online dispute resolution, and the creation of a technological development center.

One of my passions is teaching, which I have had the opportunity to do, both in Chilean and foreign universities. I am also passionate about learning about different experiences from discussions around the world. For two years now, I have been part of the commission for the reform of civil procedure law in Chile.

I am also honored to serve as Vice President of the [Inter-American Commercial Arbitration Commission](#) (“IACAC”) and secretary of the ICC Arbitration Commission. This has allowed me to incorporate international standards into CAM Santiago’s practice and to promote the Chilean legal community before these institutions.

2. Please tell us more about your users and their disputes. What kinds of parties do you usually serve, and are there particular industries or types of disputes prevalent among them?

Most of our cases are construction disputes. These cases arise from long term and complex contracts that may change over time from the parties' initial agreement due to different factors. Because these are long term contracts, there are a series of factors that affect their timely performance such as delays, unforeseen major works, feasibility studies, among others. This is why CAM Santiago has a strong and close relationship with the [Chilean Chamber of Construction](#). Such relationship has not only led us to provide them with relevant trainings and hosting of industry events, but also to more sophisticated assistance including deepening the study of Dispute Boards so that the technical community is aware of these alternatives to traditional dispute resolution methods. In 2015, we issued the [Rules on the use of Dispute Boards](#), and we usually run a series of seminars to explain Dispute Boards to the industry members.

We also administer cases related to mining, electricity, and insurance industries that contain arbitration clauses, as well as contracts that give rise to corporate disputes. Increasingly, other industries have been developing contracts that contain arbitration clauses. In many occasions, we also see multi-tier dispute resolution clauses – when the parties first submit their dispute to mediation and then to arbitration (if necessary).

Overall, there is no doubt that the most prevalent industry in arbitrations at CAM Santiago is the construction industry.

3. What percentage of your arbitrations refer to international disputes?

CAM Santiago administers hundreds of cases a year related to local disputes, and we have raised those numbers considerably in the past ten years. International arbitration cases amount to less than 8% of the total number of cases. However, both the use of technology and a reliable Judiciary have helped us to become an increasingly accessible arbitration center. We also benefit from a legal community specialized on conflict resolution that has been consistently growing. Universities have also been teaching future Chilean lawyers the importance of arbitration as a dispute resolution mechanism.

4. Prior to adoption of Ley N. 19.971 in 2004 (based on the 1985 UNCITRAL Model Law), Chile did not have an International Arbitration Act. How has such adoption impacted CAM Santiago's workload?

The [International Commercial Arbitration Act](#) in Chile was passed in 2004. CAM Santiago's President, Carlos Eugenio Jorquiera was one of the persons who contributed to CAM Santiago's success. Mr. Jorquiera went to the offices of the Minister of Justice to request that Congress passed this bill. This new legal framework allowed Chile to count with international standards and benefit from the legal certainty resulting from an arbitration act.

Chile was already a party to the [New York Convention](#), which also motivated our center to draft

specific [Arbitration Rules](#) applicable to international arbitrations. Until today, even though most of our cases are related to domestic cases, CAM Santiago has administered many international cases.

In addition, based on the International Commercial Arbitration Act, Chile's national courts are restricted by the "no court intervention principle", according to which the former can only intervene in arbitration cases when expressly authorized by the law. Article 5 of the Act establishes this principle. Although this is a rule that applies in principle to international arbitration cases only, courts also apply it to domestic cases because they have recognized the relevance of the principle of party autonomy in both scenarios.

5. *Based on Chile's political and economic stability, rule of law and strength of its institutions – compared to its neighbors in the region – in the last few years, Santiago has received some support as a seat for international arbitrations. Do you think that the [social unrest](#) experienced last year hinders the public's perception of Chile and, hence, Santiago's competitiveness as a seat?*

Our perception is that there has been no impact in this regard because international arbitration had been agreed upon in arbitration clauses prior to this political situation. Also, the social issues we experienced last year, have now been considerably impacted by the COVID-19 global pandemic. With all of the technology we have implemented, we have shown the capacity to work on international cases remotely. Every country is going through a complex moment, but our professional and institutional capacity (in addition to the national courts' support) are still intact.

6. *Through the recommendation of the World Bank, in April 2019, CAM Santiago and Ecuador signed a MoU, providing for the possibility that arbitrations arising in connection with investment contracts with the Ecuadorian government be administered by CAM Santiago. How has the MoU affected CAM Santiago's caseload? What are some takeaways from this MoU?*

The MoU was great news not only for CAM Santiago, but also for Chile as an international arbitration seat. This recognition from the World Bank is a testament to the hard work that we have been undertaking for the past 30 years. It was also a recognition of the collaboration carried out by the legal community on various topics, as well as the little intervention from national courts, which is welcomed by the arbitration community.

7. *Does CAM Santiago have similar agreements with other foreign governments or international organizations?*

We do not have similar agreements with other foreign governments. However, we have a close relationship with Ecuador, which was strengthened with the World Bank's support. We belong to IACAC, an organization that comprises 28 National and Associated Sections dedicated to the administration of arbitrations and mediations in the North Hemisphere, Spain and Portugal. IACAC is a leading institution, responsible for the development and protection of the arbitration culture through the promotion of new pro-arbitration laws and supporting existing pro-arbitration

laws. IACAC is committed to promoting arbitration through various initiatives such as education and training on various aspects of arbitration and mediation and the ongoing training and updating of a highly qualified group of arbitrators and mediators.

Being part of this organization allows CAM Santiago to access an international network, which is key to our goal of continuously raising our standards. We also host the ICC Chile National Committee, which allows us to work directly with the International Court based in Paris, where we have also been able to promote renowned Chilean arbitrators.

In addition, we have assisted and participated in annual events such as in the ICC Miami Conference on International Arbitration, and the Paris Arbitration Week. This offers us a prospective view that puts us at the forefront of the latest legal issues discussed in the international community.

8. *The COVID-19 health crisis has caused and is expected to keep causing unprecedented disruptions to several sectors of the economy and business relationships. How is CAM Santiago preparing to face the challenges brought by this new reality?*

CAM Santiago continues to provide users with its full range of services. In March 2020, for example, we received approximately 40 new notices of arbitration. This is possibly a result of the center's use of available communication technology, as well as our own disputes management system – “*e-CAM Santiago*” – that parties can use to submit their filings. That being said, and due to the current situation, by recommendation of CAM Santiago and agreement of the relevant parties, approximately 30% of our active cases have been suspended until the current conditions improve.

In addition, we have taken further concrete action aimed at addressing the current crisis:

- We have established a remote work system, whereby all of our colleagues are currently working from home, providing our usual services via different communication technologies e.g., email, phone, videoconference applications, etc.
- We have supported the development and adoption of Bill 015-368, whereby the Chilean Legislature authorizes our courts, as well as arbitration tribunals, to suspend the conduction of hearings until the current situation is overcome.
- We understand that the difficulties brought by COVID-19 will give rise to a high number of conflicts relating to many businesses and individuals not being able to honor prior commitments. In order to reduce the potential congestion of our judicial system, CAM Santiago has decided to provide our community with 1,000 online, pro bono mediations for cases with disputes not higher than US\$ 100,000.

9. *As its 30th anniversary approaches, what is your vision for CAM Santiago for the years to come?*

We are very hopeful that CAM Santiago will be a modern and one of the highest standard centers in South America. We have been growing and developing a considerable number of programs for the past 30 years, and we expect to keep on growing. Our mission is focused on training young

arbitrators, investing in technology, engaging with national courts, developing transparency standards, and creating relationships with the Chilean society so that our dispute resolution mechanisms not only reach companies, but also those in need of pro bono services or discounted rates. This is our future vision. We want to be part of the policy decision-makers in this country so we can all cooperate to the development of a better and more comprehensive Chilean state.

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