

Kluwer Arbitration Blog

Interviews with Our Editors: In Conversation with Sylvia Sámano Beristain, Secretary General of the Arbitration Center of Mexico – CAM

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Welcome to the Kluwer Arbitration Blog, Ms. Sámano! We are grateful for this opportunity to learn more about the Arbitration Center of Mexico – CAM; the type of disputes it handles and the way it is addressing recent developments, such as the COVID-19 pandemic and the adoption of new policies from the Andrés Manuel López Obrador (AMLO) administration.



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

I truly appreciate being part of this interview, thank you for the invitation.

Since 2016, I have been serving as Secretary General at the Arbitration Center of Mexico. I directly oversee the administration of the arbitration proceedings and all the other academic activities at the center.

I studied law at National Autonomous University of Mexico. Before practicing arbitration, I worked at law firms concentrating on commercial, civil and environmental law matters. My involvement in arbitration started through an LLM degree at Hong Kong University, where I had

the opportunity to witness the development of international arbitration.

I was lucky enough to have the opportunity to intern at the ICC Hong Kong office. During those months, I honed in on everything I learned through the LLM, and realized the importance of administered arbitration.

Over the last few years, I have been teaching arbitration at different law schools throughout Mexico. This has provided me with a platform to always keep studying and researching legal issues related to arbitration.

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

The arbitrations at CAM are mostly domestic. The highest percentage of disputes relate to construction contracts. The second largest percentage is related to commercial contracts and thirdly to franchise contracts. In the last few years, due to Mexico's energy reform of 2013, there have been new types of controversies related to electricity and the oil and gas industry.

3. What percentage of CAM arbitrations relate to international disputes?

Even though most arbitrations are domestic, over the last years, there has been an increase of international cases that have been administered in English. About 5% of our cases are international, and have involved parties from Europe, North America and Latin America.

4. Apart from the administration of arbitrations, what other initiatives does the Center undertake to promote the use of arbitration in Mexico?

In the academic area, the Center has two main projects:

- Moot Mexico competition – which was organized in 2002, with the goal of providing students with a practical insight into arbitration procedures. Renowned universities from Mexico as well as other countries, such as Guatemala, Perú, Colombia and Honduras, currently participate in this competition. This project is fantastic as it involves universities, practitioners, law firms and the Center. We all participate and enrich the development of the arbitration practice in the region. The results are already visible, as there are many arbitration practitioners who started their career participating in Moot Mexico.
- The essay competition, “Guillermo Aguilar Álvarez”, was launched in 2020, to encourage young practitioners to research and write an essay in Spanish about commercial and investment arbitration. The result of the first edition was very positive, we received over 30 essays from authors throughout 11 or more countries.

This competition provides a US\$ 5,000 prize for the first place winner; additionally, due to the collaboration with Tirant lo Blanch, the top 5 essays will be published. The competition will be offered annually with the aim of increasing arbitration related scholarships in the Spanish

language.

In addition to these projects, we constantly collaborate with universities, lawyer associations and other arbitral institutions in the organizing of seminars and courses.

5. *In your experience, what is the approach by Mexican courts to annulment and enforcement actions? Are they considered arbitration-friendly?*

The Mexican judicial system can definitely be considered as arbitration-friendly. Since 1993, Mexico counts with regulations consistent with the [UNCITRAL model law on International Commercial Arbitration](#). Commercial arbitration is regulated in Mexico's [Code of Commerce](#), specifically articles 1415 to 1480. During the latest reform to the arbitration regime in 2011, the amendments focused on promoting a clearer text regarding the process to request interim measures.

Regarding local and federal court approaches to arbitration, the result has been positive as courts generally recognize awards, and only annul awards if the limited terms established in the law are found.

Furthermore, there are currently several decisions from the courts which have confirmed the limited intervention courts may have in arbitration, and the role of the courts regarding annulment and enforcement of the award. These decisions refer to relevant topics such as the enforcement of arbitration agreements, the recognition of the exclusive competence of the judge of the seat regarding the annulment of the award, and the recognition of the competence-competence principle.

6. *The election of Andrés Manuel López Obrador (AMLO) was seen by many as a turning point in Mexico's politics toward a more nationalistic ideology. Have measures taken by the AMLO administration impacted commercial arbitration in Mexico in any way, for example, in terms of frequency or availability?*

Taking into consideration the Center's statistics over the last 3 years, the number of cases have been growing at an average rate. However, it is noticeable that cases related to specialized controversies such as telecommunications, energy projects and intellectual property issues, that have been referred to the center have increased.

I believe that the effects of the energy reform of 2013 will continue to have an impact in the increase of arbitration cases in Mexico, as many foreign companies began businesses in the country and trusted arbitration as the most efficient mean for solving disputes.

7. *In recent years, Mexico has been fairly active in the international arena, concluding treaties with a direct impact on international disputes (USMCA, ICSID, EU-Mexico FTA). How do you think these measures will change the arbitration landscape in Mexico and what measures is the CAM taking to face such changes?*

The conclusion of these treaties has a stronger impact on investment arbitration. Without a doubt, a new era for investment arbitration is coming. With a variety of BITs and FTAs in existence, I consider that there will be a growth in national practice in this forum.

Regarding commercial arbitration, I trust that these treaties will boost international arbitrations in which a Mexican jurisdiction may be selected as a seat. As I mentioned previously, Mexico has a suitable framework for arbitration and is ready to become a renowned seat for international arbitration.

With this in mind, specifically in CAM, we plan to amend our [Arbitration Rules of 2009](#). The aim is to offer an updated framework that meets all the current trends of the arbitration practice such as the participation of tribunals' secretaries, expedited procedures, and third-party funding.

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 the Center facing the challenges brought by this new reality?

These past months have been challenging and at the same time have strengthened the advantages of an arbitration process. Even though for the last few years we have provided the option of conducting 100% remote procedures, there still was some resistance from some practitioners. The pandemic has now evidenced that the whole arbitration process may be completed through electronic means.

The tools we have for managing arbitrations are: (i) the use of an electronic file in which all parties involved may access the documents of their proceeding, and (ii) an internal guide to assist in the administration of remote hearings and electronic exchange of documents.

In addition to the administrative actions, taking into consideration the economic situation caused by the pandemic, the Center offered a reduction of 25% on the cost of all arbitrations. This [policy](#) has been available since June 2020, and will remain in effect until June 2021. Our initiative has been well received by businesses. There have been instances in which parties did not have an arbitration agreement in place, decided to adopt one, and refer the controversy to arbitration.

A positive response has also been received from the arbitrators who have accepted appointments and fulfilled their role with the highest professional quality. This shows that the Mexican arbitration community is committed in supporting arbitration as a true effective and efficient means for dispute resolution.

Thank you for your time and perspectives – we wish you and CAM continued success!

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