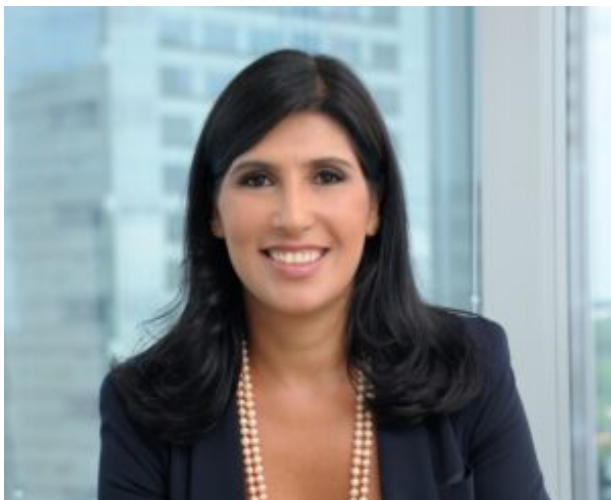


Kluwer Arbitration Blog

Interviews with Our Editors: In Conversation with Eleonora Coelho, President of the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CAM-CCBC)

Enrique Jaramillo (Locke Lord LLP) and Daniela Páez-Salgado (Senior Assistant Editor) (Herbert Smith Freehills) · Monday, August 23rd, 2021

Welcome to the Kluwer Arbitration Blog, Ms. Coelho! We are grateful for this opportunity to learn more about the [Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada \(CAM-CCBC\)](#), and its administration of complex disputes, as well as about the attractiveness of São Paulo and Rio de Janeiro as seats for international arbitration.



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

I am a Brazilian lawyer based in São Paulo, Brazil, who acts as counsel and sits as arbitrator in domestic and international arbitrations. I completed my LLB from the University of São Paulo Law School and my master's degree in arbitration from the Université Paris II at the turn of the millennium. I have published extensively and have taught on arbitration, and I am currently a visiting professor in the LL.M. on Transnational Arbitration at Sciences Po. Further, I was the vice president of the Brazilian Arbitration Committee (CBAr) and I am the current president of the Centre for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada, CAM-CCBC, the largest and most important centre of arbitration in Brazil.

2. *Now that the [Brazilian Arbitration Act](#) has been in effect for 25 years, how do you see the role*

of arbitration institutions, including of CAM-CCBC, in promoting arbitration in Brazil?

To an extent, it is possible to say that the process of consolidation of arbitration in Brazil is intertwined with CAM-CCBC's growth. CAM-CCBC went from being a *two-room-two-case* office in the 90s to today's caseload of 400 arbitrations per year.

As much as CAM-CCBC is based in Brazil and a highly regarded institution by Brazilian practitioners, we do not see ourselves as promoting arbitration specifically in Brazil. Over the last four decades, CAM-CCBC has built a unique experience administering highly complex domestic and international disputes. We have established agreements with more than 20 other institutions worldwide, sent representatives to the most important arbitration events and strove to promote arbitration everywhere, not only in Brazil. For instance, CAM-CCBC is a long-term sponsor of the Willem C. Vis Moot Court Competition and holds every year not just one but two pre-moots in preparation to the main event, one of them in São Paulo and the other in Hamburg. Every year we promote workshops, networking sessions and other events in São Paulo, Lisbon, New York City, Oxford, Vienna, and other venues. Just last year, for instance, we had 25 webinars, several of them in English. We believe that this careful attention to international trends brings Brazilian arbitration closer to international practices, nudging the domestic market towards the right directions ever since the Brazilian Arbitration Act went into force.

CAM-CCBC is the appropriate institution for a range of disputes. There are Portuguese speaking countries in 4 continents who negotiate commercial relations in Portuguese and need an institution with a list of outstanding Portuguese speaking arbitrators. Further, there are contracts concluded between European and Hispanic companies in which they need an institution from a neutral place. There are international agreements with Brazilian state entities in which these entities would not feel comfortable submitting their dispute to a foreign institution, and, at the same time, investors need a sophisticated arbitral organisation to oversee possible disputes.

From my perspective, the role of institutions in Brazil is to respect and understand the domestic practice, but also to push it towards international sophistication.

3. *Will the adoption of the new Government Procurement Act (Law n. 14,133/2021) – allowing and encouraging disputes arising from public contracts to be solved through non-judicial methods – affect the number, type or composition of cases the CAM-CCBC administers?*

Arbitration with Brazilian public entities is no novelty. Since the beginning of the last decade, and even before that, arbitral proceedings involving government-controlled enterprises are common and increasing in number and size. At CAM-CCBC alone we have administered over 50 cases involving these entities and, as a matter of fact, since 2014 we regulate some aspects of these cases through Administrative Resolutions 09/2014 and later 15/2016. In 2015, Brazil had already gone through a major reform in its Arbitration Act and one of the main changes was to explicitly provide for the lawfulness of arbitrating with state entities. Now, the new Procurement Act goes one step further towards modern public contracts, codifying what practice has already allowed: the state can, and is incentivised, to use non-judicial methods when adequate. We already manage a substantial number of the largest proceedings in which Brazilian state entities are involved and the trend seems to go up for the following years. I can only believe that with the new Public Procurement Act in force, the legal certainty it provides will allow for more public contracts to

include CAM-CCBC's dispute resolution clauses.

4. *The CAM-CCBC arbitration rules are considered to be aligned with most internationally recognized arbitration rules and are one of the most important elements to the Center's success, what is the main difference or advantage between these rules and rules issued by other institutions? Is there a particular feature of the rules that reflect Brazil's practice of arbitration, or which are particularly useful for parties arbitrating against public entities in the country?*

CAM-CCBC's rules were issued in 2012 and revised in 2016. Through the accumulated experience of 13 years under the previous Rules and the challenges brought by various cases administered until then, CAM-CCBC 2012 Rules introduced enhancements to the way arbitration is conducted in Latin America. At the time, CAM-CCBC had introduced in Brazil mechanisms that were becoming the standard internationally, such as (i) the *prima facie* analysis of the dispute before constitution of the tribunal; (ii) provisions for multiparty arbitrations; (iii) different restrictions to the appointment of the chair; and (iv) detailed provisions regarding costs.

Most importantly, CAM-CCBC introduced the [Administrative Resolutions framework](#): these are documents issued by CAM-CCBC's presidency to update the functioning of the centre and regulate some intraprocedural matters. The innovation of allowing Administrative Resolutions to solve minor issues and gradually update the main Rules has guaranteed that the Centre maintained the same set of Rules in force for nearly ten years. This way of *updating* our arbitration proceeding allowed us to pioneer major changes without the burden of issuing revised sets of arbitration rules. The Centre has addressed several important issues via Administrative Resolutions, including arbitration with [state-owned entities](#), [third party funding](#), [emergency arbitrator proceedings](#), and [expedited arbitration procedure](#). I believe that through these Administrative Resolutions we have achieved a fine balance between certainty and innovation.

5. *Please tell us more about your users and their disputes.*
- *What kind of parties do you usually serve, and are there particular industries or types of disputes prevalent among them? What percentage of your arbitrations relate to international disputes?*

CAM-CCBC has not one specialisation when it comes to types of parties or disputes. Nevertheless, our 2020 caseload does reveal patterns worth sharing. For instance, currently more than 40% of our cases relate to corporate disputes, many arising out of recent M&As or other corporate operations. Two other substantial sources of disputes are contracts for the sale of goods and infrastructure agreements. When we investigate the business sectors involved, the spread is more diverse. Construction, Electricity, Commerce and Transport represent each roughly 15% of our 2020 cases. Financial services, Agriculture and IT come right after, with approximately 7% each.

Our percentage of international disputes is close to 17%, with the remaining being domestic arbitrations. Among international parties, litigants from the USA, Uruguay, Netherlands and France constitute almost 60% of all international parties at CAM-CCBC's cases. However, there is a caveat here. For fiscal reasons, most multinational companies that invest in Brazil create a national subsidiary. When an international dispute arises, thus, it is usually carried between these

subsidiaries and the Brazilian counterpart. Therefore, we end up categorising it as a domestic dispute. A substantial part of the 83% of cases tagged as domestic is, in fact, international.

- *In recent years, the CAM-CCBC has experienced a steep increase of proceedings (over 40% in 2017), what are the reasons for the Center's success and how did it manage to administer this upsurge of cases?*

We like to think that CAM-CCBC's success is due not only to its rules, but to its very particular manner of managing arbitration. We have state-of-the-art hearing centres and digital infrastructure designed to rival the largest arbitral institutions, while maintaining the type of hands-on case management you would expect from a small hyper-specialised organisation.

Further, we aggregate a large caseload, tailor-made case management and comparatively low fees. These points are essential. Case managers at CAM-CCBC are instructed to closely manage the arbitrations, controlling deadlines, communications, and the proceedings as a whole. Although CAM-CCBC's case managers are hands-on with their cases, CAM-CCBC's intervention ends there. The CAM-CCBC does not *scrutinise* arbitral awards.

6. *We understand CAM-CCBC has founded a young arbitration practitioners group called NewGen. Could you please tell us about this initiative and others CAM-CCBC is taking to promote the study and practice of international arbitration among young practitioners?*

NewGen is CAM-CCBC's group for innovative thinking and creative design of the future of ADR's. It was created just years ago but it has grown exponentially and now it has more than 400 members throughout the world. The group is organised in a way that members are required to be active, rather than passive, parts of the project. NewGen is constantly calling for papers, investing in the education of its members through specific training, and questioning what the new generations think of our current methods. Recently we offered a mediation training for NewGen members with renowned professionals from Germany and Austria. It is our understanding that the new generation will bring new ideas, solutions, and credibility to arbitration practice. This is why we chose to empower new generations through NewGen. The ball will be in their court soon, best that they are ready when it gets there.

7. *The COVID-19 health crisis has caused and is expected to keep causing unprecedented disruptions to several sectors of the economy and business relationships, such as those in the oil and gas sector. How has the pandemic affected the CAM-CCBC, its caseload and how did it face the challenges brought by this crisis?*

Throughout the last year, we reinforced our commitment to improving ADR methods, always guided by our duty towards social responsibility and ethical performance. Despite physical distancing, our secretarial staff remained accessible along the year. This is all part of CAM-CCBC's institutional policy: our greatest responsibility is to deliver the best possible service to the parties, lawyers and arbitrators acting in our proceedings. In fact, in only 48 hours after the pandemic's breakout, CAM-CCBC organised itself to ensure the remote continuity of more than

300 cases. [Administrative Resolution n. 40/2020](#) provided rules for the remote management of proceedings. We have also put in place a project that was already in progress: the complete migration to electronically conducted arbitrations and mediations, equally efficient and secure. We have also expanded our academic activities virtually, organising 25 webinars, the VII CAM-CCBC Arbitration Congress, in hybrid format, and the III São Paulo Arbitration Week (SPAW), held entirely online.

The impact on our cases was substantial. Without the need to send and receive hard copies, electronic filing made the process faster and also cheaper. From March 2020 to December 2020, a total of 15,498 letters were not sent in hard copies, a decrease of 97% in comparison with 2019. It saved approximately 522,000 Brazilian reais in courier costs and an immeasurable benefit to the environment. One of our studies regarding arbitration proceedings costs during the pandemic revealed a decrease of 93% in spending related to hearings, exchange of hard copies, coffee breaks and others.

The lower expenditure comes with a bonus: higher efficiency. With the full visualization of our services, our Secretariat achieved a whole other level of speed while managing arbitrations, mediations, and dispute boards.

Also, last year CAM-CCBC administered 418 proceedings, our largest caseload in history. I believe that through quick action and sensible measures we have managed to balance all interests involved and do the best we could, given the circumstances.

Thank you for the interview – we wish you and CAM-CCBC all the best!

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