

Kluwer Arbitration Blog

New Domestic and International Arbitration Rules at Uruguayan Chamber of Commerce in Force: A Much-Awaited Update

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As of January 1, 2022, the Conciliation and Arbitration Center of the Uruguayan Chamber of Commerce and Services (“**Center**”) has new Arbitration Rules (the “**2021 Rules**”) in force. They apply to cases filed from January 1, 2022 onwards.

Following the trend of several other institutions in the region, who updated their rules in 2021, in a context where cases in Uruguay and before the Center have continued to [increase](#), this update of the Arbitration Rules making them consistent with standard international practice is welcome.

The former rules were often a significant obstacle for non-Uruguayan parties to accept submitting to arbitration administered by the Center. They lacked flexibility and failed to reflect international practices in significant aspects, the most relevant being the design and duration of the written phase of the proceedings (with no possibility for a reply or rebuttal and terms for relevant filings being too short), and the rules for production of evidence. The former Rules were inspired, almost verbatim, by the procedural regulations governing most non-criminal litigation in the country including family matters (the 1989 “[General Code of Procedure](#)”) which—unsurprisingly—is unsuitable for commercial arbitration. While the parties could agree on different terms and depart from some rules, this “bargaining” process, when possible, was far from efficient.

The 2021 Rules include standard arbitration practices, many of which the Center had begun applying before, especially since the Covid-19 pandemic started. They mirror the Rules of the main global institutions in key aspects: flexibility, production of evidence, use of technology, transparency, joinder of parties and consolidation of proceedings and expedited proceedings.

The main features of the new rules are discussed below.

1. Flexible Rules and Procedure: Calendar, Submissions and Evidence

A key novelty of the 2021 Rules is a paradigm shift in the design of the proceedings. To gain efficiency and afford the parties the possibility to fashion a suitable proceeding, the 2021 Rules add three traditional milestones which the former rules lacked: (i) the Terms of Reference (“Initiation Act,” art. 25), (ii) a conference to discuss the proceedings (art. 26), and (iii) the Procedural

Calendar (art. 26).

The *Terms of Reference* are to be signed by the parties and the tribunal and, as is customary, must contain the basic description of the tribunal's mission, including the parties' positions and claims, the matters to be decided, the applicable procedural and substantive rules, the venue and the language of the proceedings. The signing of the Terms of Reference has two consequences under the 2021 Rules: (i) it prevents filing new claims, unless authorized by the tribunal, considering their nature, the stage of the proceedings and other relevant circumstances (art. 11), and (ii) it triggers the term to issue the Award (six months as from execution of the Terms of Reference, unless a different term is set in the Procedural Calendar, or it is extended by the Center upon the tribunal's request or at its own initiative as allowed by article 41).

Another addition is the duty of the arbitrators to hold a *conference* with the parties to discuss how the proceedings are to be conducted and help decide the procedural calendar. The addition of a procedural calendar designed by the parties together with the tribunal is a critical shift in the Center's regulation, abandoning the formerly structured proceedings including fixed 30-day terms for the main submissions and 10, 6 or 3-day terms for less relevant filings, resulting from applying the General Code of Procedure.

Additionally, the 2021 Rules amended the production of evidence which is now governed by principles consistent with the [IBA Rules on the Taking of Evidence in International Arbitration](#). Now (i) witness statements and expert opinions must be submitted in writing and witnesses and experts may be examined about them later at a hearing, (ii) anyone can be a witness, including the parties, their directors, or their employees—although this was already common-practice, with this provision frequent objections are now settled—and (iii) arbitrators may appoint experts in consultation with the parties, but the general rule is that the expert reports are filed by the parties, as is standard practice.

2. Electronic Communications and Virtual Hearings

While the Center had started to allow electronic communications in the months following the beginning of the pandemic and hearings since then have included different combinations of in-person, hybrid or virtual (mostly subject to the tribunal's discretion or agreements reached by the parties), now under articles 3, 26 and 31 of the 2021 Rules written submissions and evidence shall be filed electronically. The exception to this are initial filings (i.e., the Request for Arbitration, art. 5; the Response, art. 6; and the Counterclaim, art. 6), which must be submitted in hard copies.

While no specific protocol for virtual hearings was approved, the 2021 Rules include some provisions stating that: (i) the case management conference shall be virtual, unless the arbitrators find it necessary that it be in-person; and (ii) that hearings can be virtual or hybrid, if one of the parties or an arbitrator so requests and gives valid grounds for it. Despite the Rules being silent as to what reasons call for virtual or hybrid hearings, in addition to sanitary restrictions—which will hopefully decrease in relevance—procedural efficiency and cost-saving are valid grounds for witnesses to testify by videoconference.

3. Provisional Remedies and Emergency Arbitrator

The 2021 Rules also address the lack of a regulation on provisional measures, a possibility allowed by the Uruguayan Arbitration Act, [Law 19,636](#), but which had no supporting provision in the old rules. Under Art. 35 provisional remedies can be adopted before or after the tribunal is appointed. Once constituted, the tribunal shall rule on provisional remedies, but until then the parties can: (i) apply for provisional measures before domestic courts without waiving the arbitration agreement (this is consistent with the Arbitration Act), and (ii) request provisional remedies from an emergency arbitrator, a possibility not contemplated by the former rules. The Emergency Arbitrator provisions apply only to cases based on arbitration agreements signed after January 1, 2022, provided that the parties do not expressly opt out of them.

The Emergency Arbitrator procedure—which is similar to the one included in most institutions’ rules—is designed to last roughly 30 days, a period in which the arbitrator is appointed, the parties are heard, and the measure, if any, is issued. Within 10 days of obtaining the measure the Request for Arbitration must be filed.

4. Expedited Arbitration for Cases Under US\$ 200,000 or if Agreed Upon

As has been the trend of many institutions, the 2021 Rules also include regulations on small claims and expedited arbitration, addressing a need regularly pointed out by practitioners.¹⁾

Similar to what happens under most rules, the 2021 Rules provide for an expedited procedure for (i) cases under a certain threshold (which here is rather low: US\$ 200,000) and with arbitration clauses executed after January 1, 2022, or (ii) even in cases involving a higher amount if the parties choose the expedited procedure. The parties can opt out of the expedited procedure, which can also be disregarded by the Center based on the circumstances of the case.

Time and costs are reduced by having a sole arbitrator (a rule with a few exceptions), shorter terms to hold the case management conference (there are no Terms of Reference) and more powers for the arbitral tribunal to limit the parties’ submissions and to reject evidence (Articles 47 to 49 of the 2021 Rules). Finally, the award must be issued within a year as from when the case was referred to the tribunal (which may be extended under exceptional and justified circumstances).

5. Multi party and Multi contract arbitrations.

Lastly, as is common in many institutions and in manner consistent with the [2020 ICC Rules](#), the 2021 Rules of the Uruguayan Center allow to: (i) incorporate parties in pending arbitrations (art. 8); (ii) file arbitrations against several parties or based on several contracts (art. 9); and (iii) consolidate proceedings (art. 10).

Additional parties may be joined before or after an arbitrator is confirmed and even after the Terms of Reference are signed, subject to different requirements: (a) before an arbitrator is confirmed, the request of a party suffices (unless it has been agreed that its joinder would not proceed); (b) after an arbitrator is confirmed: the agreement of all parties (including the party intended to be joined) is needed; (c) after the Terms of Reference are signed: at the discretion of the tribunal even if the parties so agree (the tribunal shall consider the need or convenience of resolving the disputes with the additional party in a single proceeding, the progress of the proceeding and other relevant

circumstances).

Regarding arbitration with multiple parties and/or contracts, although this had been allowed to a certain extent based on the local procedural regulations or the tribunal's discretion under the former rules, the 2021 Rules clarify that arbitrations based on different contracts can continue between the same parties.

Consolidation under the 2021 Rules can proceed absent an agreement by the parties in two cases: (i) if the arbitrations were brought under the same arbitration agreement; and (ii) if they were initiated under different agreements consolidation will also require that: (a) the proceedings be between the same parties; (b) the disputes stem from the same "legal relationship"²⁾; and (c) the arbitration agreements are compatible.

Final Remarks

The 2021 Rules are very good news for arbitration practice in Uruguay and in the region, especially for domestic and medium-size arbitrations that under the 2021 Rules can be resolved following widely extended practices and with flexibility in view of the circumstances of a case. These changes strengthen the Center as a modern institution and together with the update of the arbitrators list serve as a strong step in the right direction to help continue developing arbitration in Uruguay.

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References

- ?1 See, Patricia Shaughnessy, *UNCITRAL Working Group II: Expedited Arbitration Provisions as Stand-Alone Rules, or Appendix and When Should They Apply*, Kluwer Arbitration Blog, September 16, 2020; Julián Bordaçahar, *UNCITRAL, Expedited!*, Kluwer Arbitration Blog, July 14, 2021; *UNCITRAL Expedited Arbitration Rules*)
- ?2 See, Smitha Menon, Charles Tian, *Joinder and Consolidation Provisions under 2021 ICC Arbitration Rules: Enhancing Efficiency and Flexibility for Resolving Complex Disputes*

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