

Kluwer Arbitration Blog

Interviews with Our Editors: In Conversation with Patricia Vera, Director of the Center for Arbitration and Mediation of the Ecuadorian-American Chamber of Commerce (CAM-AMCHAM Ecuador)?

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Welcome to the Kluwer Arbitration Blog, Ms. Vera! We are grateful for this opportunity to learn more about the Center for Arbitration and Mediation of the Ecuadorian-American Chamber of Commerce (CAM-AMCHAM Ecuador)?, and its administration of complex disputes, as well as about the attractiveness of Quito as a seat for international arbitration.

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



With great pleasure. First of all I want to thank Kluwer Arbitration Blog for this invitation. I want to start by telling you that I am the mother of a boy. I am also an Ecuadorian lawyer from the Universidad de las Americas, and hold a master's degree in Arbitration and International Litigation from Universidad San Francisco de Quito. My entire professional career has been focused on arbitration and I have had the opportunity to work for different arbitration centers such as the arbitration center of the Lima Chamber of Commerce in Peru and, now, for some years at the CAM-AMCHAM Ecuador.?

At CAM-AMCHAM Ecuador, I am the Director of the Center and I am mainly in charge of the administration of all the arbitration and mediation cases that we receive. According to the provisions of the [Ecuadorian Arbitration and Mediation Act](#), it is up to me to assess the notices of arbitration, as well as the answers to such notices and, if applicable, the counterclaims. My main functions entail the administration of an arbitration from the beginning until the Arbitral Tribunal is constituted. After that, it is the arbitrators who take charge of the arbitration.

On the other hand, it is also a very important part of my work to carry out events that promote both arbitration and mediation in Ecuador. I am in charge of organizing national and international conferences that each year contribute to the Ecuadorian arbitration community which discuss relevant and current developments. We carry out these conferences with the support of the [Ecuadorian Arbitration Institute](#) (*Instituto Ecuatoriano de Arbitraje*), Universidad San Francisco de Quito and Universidad de las Americas. Another very important academic event for our Center and our country is the [National Arbitration Moot Competition](#) (*Concurso Nacional de Arbitraje*), which takes place year after year and encourages the participation of students who are preparing to defend a mock case as either plaintiffs or defendants before moot tribunals made up of local lawyers and arbitrators who collaborate with this project. Part of my responsibilities also include the development of webinars or training sessions that contribute to the development of arbitration in Ecuador.

Finally, my role also involves administrative duties including presenting potential candidates to the Center's Board of Directors to be part of our list of arbitrators, mediators and secretaries for their approval.

2. Please tell us more about your users and their disputes. Does CAM-AMCHAM Ecuador focus exclusively on disputes between Ecuadorian and American parties or does it serve other types of parties? What percentage of your arbitrations relate to international disputes?

In the Center we have different users, some of them members of AMCHAM Ecuador and others not, most of them are law firms dedicated to arbitration practice, as well as medium and large local and international companies that have operations in our country. We provide an open service to the entire community in general and also to parties located anywhere in the world, including the United States. ?

The majority of our users belong to the private sector and generally submit commercial or civil disputes for resolution through arbitration. We have also had some construction, telecommunications, and insurance cases among others.

Starting this year, we have implemented emergency arbitration for the first time in our country and we have already had some cases that have been successfully resolved. We hope that this will allow our users to be able to request precautionary measures before an emergency arbitrator and not have to wait until the arbitral tribunal is constituted.?

3. What is an important highlight of CAM-AMCHAM Ecuador's services that sets it apart from other arbitration centers based in Ecuador?

CAM-AMCHAM Ecuador provides a service of excellence. In all our cases, we personalize our services from the moment a claim is filed until the arbitration ends. We manage internal response times that allow us to provide immediate attention to the requirements of our users. This is complemented by our new [Rules](#), which entered into force on January 1, 2022. These Rules follow an innovative approach which allows to maintain more flexible arbitrations and at the same time provide a better service to our users. As way of context, the Ecuadorian Arbitration and Mediation Act was issued in 1997 and partially amended in 2006. The [Regulations](#) to the Act were issued in

August 2021. Therefore, prior to the Regulations' enactment, parties and arbitral institutions could solely rely on the arbitration rules of each center for the administration of arbitrations. The AMCHAM Ecuador's Arbitration Rules has always been cutting-edge, so much so that, even before the COVID-19 pandemic, it already provided for virtual hearings and the storing of digital files. In addition to this, we have a list of arbitrators specialized in different fields and with a great professional career. ?

4. *What impact will the new Regulations to the Arbitration and Mediation Act – regulating arbitration with State entities, enforcement and annulment of domestic and international awards, precautionary measures, etc. – have on cases administered by the CAM-AMCHAM Ecuador?*

I believe that, in all arbitral institutions, this will have a positive impact since, as I mentioned before, our Arbitration Act did not have Regulations dealing with the implementation of the law. The centers self-regulated through their respective internal operating regulations. In our case, the first Amcham Quito Arbitration Rules were issued together with the creation of the center in 2000 and were amended in 2012. Our current Rules were issued on January of this year. In this sense, I believe that the new Regulations to the Arbitration and Mediation Act came to complement the gaps left by the Act itself and to strengthen local arbitration, as well as to promote arbitration involving state agencies.

5. *Please tell us about the attitude of local courts toward international arbitration, in particular about their approach to recognition and enforcement of arbitration agreements and awards, as well as the extent of their assistance to arbitration tribunals seated in Quito. Will the new Regulation to the Arbitration and Mediation Act impact or change said approach?*

Local courts never had a very clear parameter regarding the enforcement of international awards, but nevertheless, depending on the judges who had to hear these petitions, they acted based on their own criteria and following the few standards established in the law. Undoubtedly, the Regulations now clarify and define the procedures to be followed for recognition and enforcement of awards.

In relation to judicial assistance to arbitral tribunals, there has been little interpretation. As arbitration is a procedure regulated by the Arbitration and Mediation Act (and not procedural rules), there has not been a strong relationship between judges and arbitrators. However, in those cases in which there was an arbitration agreement, but a lawsuit was nevertheless submitted before local courts, the judges have correctly recognized the existence of an arbitration agreement and referred these processes to the corresponding arbitration center. In this sense, I believe judges understand and recognize the existence of the arbitration agreement and the arbitration system by the judges. Maybe not all of them, but most of them.

Another circumstance that relates to arbitration and local judges is the request for precautionary measures. Under Ecuadorian law, arbitration begins with the filing of a notice of arbitration before the director of the arbitration and mediation center. The director is responsible for admitting the claim and summoning the defendant, who in turn must answer to it before the director. This entire process, until the arbitral tribunal is constituted, can take approximately three months. This implies that, if the claimant requires that a precautionary measure be issued, they must wait until the

constitution of the tribunal. In these cases, the party that needed the measure resorted to a judge and requested the precautionary measure prior to filing its arbitration claim. The judge could grant or reject the request. Now, in our Center, parties can resort to emergency arbitration thanks to our new 2022 Rules, as an alternative to seeking relief before local courts.

6. *On January 1, 2022, the new **Regulations for the Operation of the CAM-AMCHAM Ecuador (CAM – AMCHAM Ecuador Regulation)** (“Estatutos y Reglamento para el Funcionamiento del Centro de Arbitraje y Mediación de la Cámara de Comercio Ecuatoriana Americana”) entered into force. Can you tell us about the most important developments brought by this new regulation?*

Of course, this was a project that we had been working on for several years with the previous Director of the Center, Hugo García. This new Regulation contains standards that propose to generate greater equality for the parties and at the same time flexibility, always respecting the right of due process and defense, as well as the right to procedural swiftness. The Regulation builds on the procedural provisions established in local law and aims at improving and expediting the arbitration process. Among the novelties that the regulation brings is the method for appointing arbitrators, the consolidation of arbitrations, the option to choose between in-person or virtual arbitrations and especially the figure of the emergency arbitrator. ?

7. *The **CAM – AMCHAM Ecuador Regulation** includes the **Rules for Local Arbitration for the Operation of the CAM-AMCHAM Ecuador** (“Reglamento de Arbitraje Local para el Funcionamiento del Centro de Arbitraje y Mediación de AMCHAM Quito”). Does CAM – AMCHAM Ecuador, also have rules for international arbitration? If not, what rules do disputes administered by the Center usually implement?*

Indeed, we have Rules for International Arbitrations which allows the parties and arbitrators who are in different countries to carry out procedures with international procedural rules. ?This Regulation has been in force since 2013.?

8. *The **COVID-19 health crisis** has caused unprecedented disruptions to several sectors of the economy and business relationships, and it has also given rise to creative solutions. Is the recently-published **General Online Arbitration Proceeding** a tool created by CAM-AMCHAM Ecuador, as a result of the pandemic? Could you tell us more about it?*

Evidently, we have all been affected by the crisis generated by the pandemic. ?However, one of the advantages that we had as a center with the publication ?of the 2012 Rules is that said rules already provided for virtual hearings and the use ?of any technological mechanism allowing the proper conduction of processes. This has allowed us to have an immediate response due to the experience we already had doing virtual hearings. As soon as the pandemic and related restrictions were decreed, we issued virtual process manuals that indicated how arbitrations and mediations could be filed. We quickly obtained positive results and this allowed us to continue providing our services in times of great uncertainty. Thanks to all this, we were able to refine certain things and incorporate them into what would later become our new Rules. We introduced details that we saw could be

done in a better way and thus continue to provide a personalized service remotely. In this sense, in response to the question, it was not the pandemic that led us to update our Rules. The new Rules are the result of work that began a long time ago before the COVID 19 pandemic.

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

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