

Kluwer Arbitration Blog

Chile's CAM Santiago Unveils Its First Regulation On Emergency Arbitration

Felipe Ossa, Martín Álvarez (Claro & Cia) · Friday, November 3rd, 2023

On 11 August 2023, the Santiago Arbitration and Mediation Center (“CAM Santiago”) – Chile’s main arbitration center – presented its new regulation on emergency arbitration, which was incorporated into the [2021 National Arbitration Rules](#) (the “CAM Santiago Arbitration Rules”). The amended version of these rules also came into effect recently, on 1 September 2023.

Legal Framework Before the 2023 Amendment

Until now, the CAM Santiago’s arbitration rules (both national and international) did not provide any regulation on emergency arbitration. If a party required interim measures before the constitution of the arbitral tribunal, Article 22 of the [CAM Santiago Arbitration Rules \(before the 2023 modification\)](#) directed it to the [Chilean Code of Civil Procedure’s \(“CCP”\)](#) provisions on pre-trial interim measures.

The CCP provides for various form of pre-trial (i.e. before a lawsuit is filed) interim measures, including measures aimed at preparing a trial (for example, the production of specific documents – *see* Article 273); evidentiary measures, intended to secure specific means of evidence at risk of disappearing (for example, witness statements – *see* Articles 281 and 286); or preliminary injunctive relief (for example, the prohibition to execute acts or contracts over specific assets – *see* Articles 279 and 290).

As stated in a [newsletter](#) by CAM Santiago, the incorporation of emergency arbitration responded to popular demand by both arbitration practitioners and arbitrators alike. Among other advantages, representatives of CAM Santiago mentioned the confidential nature of emergency arbitrations, the specialized knowledge of arbitrators and the convenience of concentrating pre-trial requests and the arbitration procedure itself under a single venue.

Brief Overview of the 2023 Amendment

Under Article 21*bis* of the amended CAM Santiago Arbitration Rules, arbitration proceedings may now be initiated through a request for pre-trial interim measures. This request may be filed indistinctively before State courts or before CAM Santiago in the form of a request for emergency

arbitration. Once the interested party has opted for one alternative, it cannot subsequently resort to the other; but resorting to State courts does not amount to a waiver of the right to pursue arbitration on the merits.

Requests for emergency arbitration are derived by CAM Santiago to a single arbitrator within two days, after reviewing whether the formal requirements set out by Article 53 have been met and that the parties have not waived the right to emergency arbitration in the arbitral clause. The emergency arbitrator is chosen from a roster specially composed for emergency arbitrations.

Before accepting his or her designation, the emergency arbitrator must sign a declaration of availability, independence and impartiality. The emergency arbitrator shall then proceed to formally accept the appointment and swear or promise to fulfill the mandate faithfully and diligently (a requirement for any arbitrator under Article 236 of Chile's Judiciary Organization Code), within two days of his or her designation.

Once appointed, the emergency arbitrator shall freely determine how to proceed before issuing a decision. Most noticeably, pursuant to Article 53 of the CAM Santiago Arbitration Rules, a party can request for the interim measure to be conceded *ex parte* (in line with Article 289 of the CCP). In case such a request is rejected, the emergency arbitrator shall order for the personal notification of the emergency arbitration to the other party.

Once any pending issues have been resolved, the emergency arbitrator must proceed to issue a decision within five days. If the decision was granted *ex parte*, it must be personally notified to the respondent within five days. The emergency arbitrator shall retain jurisdiction to hear any request for the amendment, expansion or withdrawal of the interim measure until the constitution of the arbitral tribunal. After that, the arbitral tribunal shall be empowered to review any decision by the emergency arbitrator.

Differences With Other Arbitration Rules

This emergency arbitration mechanism was heavily inspired by existing regulations from other national and international centers, as stated in the above-referenced newsletter. However, said rules were also modified to account for Chile's own legal reality and traditions.

One of the most noticeable differences with other arbitration rules is the possibility of granting an interim measure *ex parte*. Indeed, leading arbitration institutions such as the [International Chamber of Commerce](#), the [International Centre for Dispute Resolution](#), the [American Arbitration Association](#), the [Hong Kong International Arbitration Centre](#) and the [Singapore International Arbitration Centre](#), all rule out the possibility of proceeding *ex parte* by requiring some form of notification to the respondent before moving on to a decision.

While this feature may raise questions from a due process standpoint, the power of national arbitrators to grant interim measures *ex parte* is not usually questioned under Chilean law, pursuant to the provisions of the CCP (see generally, the [report on emergency arbitration](#) prepared by the 'UC Justice Reforms Program').

Another salient difference of the 2023 amendment is a consequence of the close relationship between the CAM Santiago Arbitration Rules and the CCP. Pursuant to the CCP, if a party is

granted injunctive relief (*medidas precautorias*) at a pre-trial stage, it must file its lawsuit within the next 10 days after it was granted (this term may be extended up to 30 days in justified cases). The CAM Santiago Arbitration Rules provide (Article 21*bis*) that the requesting party shall file a request for arbitration or a request for the constitution of the definitive arbitral tribunal within the same term, along with its lawsuit. However, this term shall be suspended while pre-arbitration steps are performed in cases of multi-tiered dispute resolution clauses (Article 58).

Another legacy of Chile's civil procedure regulation relates to the initial notification to the respondent. Pursuant to the CCP, the first resolution to the parties must be 'personally notified', through a judicial minister of faith who delivers a copy of the resolution and associated briefs to the respective party. In the case of emergency arbitrations, if a request is not granted *ex parte*, personally notifying the respondent may prove troublesome, as a respondent who suspects a pre-trial interim measure may adopt measures to avoid notification. In any case, this issue is common to judicial proceedings before Chilean courts, and in practice may prove less important in the case of sophisticated companies such as the ones that currently resort to arbitration before CAM Santiago.

Finally, and unlike other institutional rules, arbitrator's fees for emergency arbitrations are differentiated according to the disputed amount, distinguishing between disputes of less than 5,000 UF (aprox. 210,000 USD); less than 50,000 UF (aprox. 2.1 million USD); and above 50,000 UF. Arbitrator's fees range from 75 UF (aprox. 3,100 USD) for the lower range to 300 UF (aprox. 12,600 USD) for the upper range.

Enforceability of Decisions by Emergency Arbitrators

The power of arbitrators to issue interim measures is a settled matter under Chilean law, largely due to the jurisdictional nature that is frequently attributed to arbitration by scholars (*see*, in this regard, the above-referenced report prepared by the Justice Reforms Program). As such, CAM Santiago arbitrators frequently issue interim measures that are fully enforced and complied with. Therefore, enforcing decisions by emergency arbitrators should not pose an additional challenge for parties seeking interim relief.

A caveat must be made, however, in relation to interim measures that require the use of coercive measures or affect third parties. It is generally agreed that, in Chile, arbitrators lack the power to request the assistance of public force (*see* generally, the [report](#) prepared by Chilean professor Nicolás Frías on this issue). In this regard, Article 635 of the CCP establishes that, when the execution of an arbitral decision requires enforcement proceedings (*procedimientos de apremio*) or the use of other compulsory measures, or when it affects third parties, State courts are called upon to enforce the decision.

It remains to be seen how Chilean courts will respond to requests for assistance by emergency arbitrators. However, previous interactions between courts and arbitral tribunals indicate that, again, this limitation on the powers of emergency arbitrators should not pose an additional challenge for parties.

Conclusions

The incorporation of emergency arbitration into the CAM Santiago Arbitration Rules is an unprecedented landmark in the development of Chile's arbitration institutions in conformity with modern international standards. Parties seeking arbitration are now offered a "one stop shop" by CAM Santiago for all their arbitration needs, which is a positive step in the right direction of promoting arbitration as a dispute resolution alternative.

It remains to be seen how national arbitrators will apply the rules on emergency arbitration, and their effectiveness compared to the traditional assistance by State courts. However, we are optimistic that the highly qualified arbitrators usually selected by CAM Santiago for its rosters and the pro-arbitration stance of Chilean courts will allow parties to benefit from emergency arbitration and consolidate this mechanism in Chile.

To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe [here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).

Profile Navigator and Relationship Indicator

Access 17,000+ data-driven profiles of arbitrators, expert witnesses, and counsels, derived from Kluwer Arbitration's comprehensive collection of international cases and awards and appointment data of leading arbitral institutions, to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Newly updated

Profile Navigator and Relationship Indicator Tools

Wolters Kluwer

Request your free trial now →

The advertisement features a dark background with vibrant green and orange light streaks. On the right side, there are two overlapping screenshots of the software interface. The left screenshot shows a 'Profile Navigator' with a search bar and a list of profiles. The right screenshot shows a 'Relationship Indicator' for a specific profile, displaying a network of connections. The Wolters Kluwer logo is positioned in the bottom left corner, and a call-to-action button is in the bottom right corner.

This entry was posted on Friday, November 3rd, 2023 at 8:51 am and is filed under [Chile](#), [Emergency Application](#), [Emergency Arbitrator](#), [interim relief](#), [Latin America](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.