

# Kluwer Arbitration Blog

## CAM-CCBC Arbitration Congress X Edition: the Today and Tomorrow of Arbitration

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On 16 and 17 October 2023, the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada held its X<sup>th</sup> Arbitration Congress edition (“X CAM-CCBC Congress” or “Congress”) in São Paulo. The Congress is the opening event of the VI<sup>th</sup> Sao Paulo Arbitration Week (“VI SPAW”): a collaborative calendar for law firms, universities, associations, and institutions to organize and promote ADR events in Sao Paulo.

The X CAM-CCBC Congress represented the launch of a new era in CAM-CCBC’s leadership. The presidency role will no longer be composed by one person only, but rather a collegiate leadership. In the upcoming [mandate](#), the presidency will be lead by Mrs. [Silvia Pachikoski](#), Mr. [Ricardo Aprigliano](#) and Mr. [Rodrigo Garcia da Fonseca](#). The Congress also officially launched the CAM-CCBC’s [Corporate Arbitration Rules](#), which will be addressed below.

### *Opening Remarks*

Mr. Fonseca opened the Congress thanking the audience for the opportunity of launching his first CAM-CCBC -Congress as the president of the institution. He mentioned that during the new mandate, they will put their best efforts to maintain the quality achieved on the performance of services, diversity, sustainability and best practices in arbitration and other adequate dispute-resolution methods. He emphasized CAM-CCBC’s determinations on diversity, highlighting their worries on guaranteeing the presence of at least 30% of woman on all the events that they sponsor and support, as per the [30/2018 Administrative Resolution](#). On the VI SPAW and X CAM-CCBC Congress, this goal was surpassed with a representation of 40% of women as speakers on VI SPAW and 54% on X CAM-CCBC Congress. They also increased the number of women on their list of arbitrators, with reached a total of 35 % as of today.

Mr. Fonseca added that they are also putting their efforts in other diversity initiatives, such as the group [REAL](#) (Racial Equality for Arbitration Lawyers), related to racial diversity, and the [Green Pledge](#) related to sustainability.

To close his remarks, Mr. Fonseca commented that CAM-CCBC updated its questionnaire on impartiality and availability of arbitrators by its [Complementary Norm No. 4/2023](#), in light of the

current discussion on this matter worldwide. Finally, he wrapped up indicating the main achievements of CAM-CCBC on the past year and emphasizing the role of arbitration to promote peace and represent a better mechanism of solving disputes.

### ***Towards a full recognition of the principle of competence-competence in Brazil***

Following the opening ceremony, the Congress hosted the keynote speech on the principle of competence-competence delivered by Prof. Yas Banifatemi, who opened her speech indicating that she chose this topic in tribute to Prof. Emmanuel Gaillard who was very keen of Brazil and Brazilian Law and would have appreciated seen this issue been addressed.

Prof. Banifatemi started her lecture making few comments regarding consent. Indeed, this was the very topic addressed by Prof. Gaillard on his last key-note speech. Second, Prof. Banifatemi referred to the sources of such principle, particularly the article II of the [1958 New York Convention](#) and the article 16(1) of the [UNCITRAL Model Law](#).

After that, Prof. Banifatemi distinguished the positive and negative effect of the competence-competence principle, also detailing its rationale. Her position in a nutshell is that this principle applies the rule of priority, which means that arbitrators are the first (as opposed to the sole) judges to decide on their own jurisdiction.

Furthermore, Prof. Banifatemi mentioned the anti-example of interpreting the competence-competence principle through the “Gateway Issues”, very often adopted in U.S. law. To close her remarks, Prof. Banifatemi detailed the application of the competence-competence principle in Brazil.

### ***Launching CAM-CCBC’s Corporate Arbitration Rules***

After the keynote speech, Ms. [Eleonora Coelho](#) and Prof. [Paula Forgioni](#) promoted the recently launched CAM-CCBC’s Corporate Arbitration Rules. Their speech was divided in two main topics, addressing first the scenario in which Brazil is currently found regarding these types of disputes, and after that, Prof. Forgioni explained the features of the [CAM-CCBC’s Corporate Arbitration Rules](#).

Ms. Coelho presented on the importance of arbitration to corporate disputes, indicating the statistics of their usage. She pointed out that the nature of corporate disputes usually affects multiple parties and leads to decisions that will affect and bind a group of partners, administrators and stakeholders that are not necessarily parties to the arbitration, which creates some challenges. Having these challenges in mind, the [CAM-CCBC’s Corporate Arbitration Rules](#) were created to rule upon those issues after a deep national and international study on the matter.

Prof. Forgioni indicated as fundamental modifications of these new rules, among others, (i) the possibility of all affected parties to an arbitration becoming formal parties of the proceeding, and (ii) the publicity of information about the proceedings for all related parties.

## *Understanding the Role of State Courts on The Effectiveness of Arbitration*

Ms. Silvia Pachikoski, Ms. Simone Barros, Judge Sérgio Seiji Shimura, Mr. José Emilio Nunes Pinto and Judge Luis Felipe Ferrari Bedendi discussed about the role of state courts on the effectiveness of arbitration.

Judge Bedendi started indicating that he has been working on the specialized court of arbitration for the last six years. During this period, he noted that the claims related to arbitration, may be summarized in four groups: (i) pre-arbitration injunctions; (ii) enforcement of arbitral awards; (iii) annulment proceedings; and (iv) arbitral letters, the mechanism of communication between state courts and arbitral tribunals created by the Brazilian Arbitration Act under its Article 22-C. He made considerations upon each of them detailing their frequency during the past years.

After that, Ms. Barros highlighted the importance of state courts to arbitration. She pointed out that they are essential to enforce interim measures that are for instance crucial for dispute resolutions in general. Interim measures granted by the state courts previous to the beginning of the arbitration tend to serve inclusive as a strategic tool to better understand the position of the parties on the dispute and the evidence that they have for their claims. Because very often his kind of measures seeks to anticipate the final outcome of the dispute, it is very often used in the beginning of cases to understand the strength of parties' allegations and to modulate the effects of parties' position before the beginning of the arbitration.

Following Ms. Barros, Judge Shimura continued the analysis of interim measures. He explained that the same criteria adopted for interim measures for judicial proceedings are used for arbitral proceedings. He focused his presentation on some points that may arise when dealing with arbitral measures, such as, the early production of evidence, the applicability of non-contractual attorney's fees (a Brazilian particularity), and the limitation period imposed by the [Brazilian Arbitration Act](#) to start arbitral proceedings within thirty days from the date in which the interim measure was granted.

Lastly, Mr. Nunes Pinto discussed the many challenges arbitration is facing nowadays, focusing on the annulment proceedings based on challenges of arbitrators and poorly written awards.

### *Back to Basics: Unravelling the Challenge of Arbitrators*

Following the lunch break, Mr. Márcio Vieira Souto, Ms. Sandra González, Ms. Tafadzwa Pasipanodya, Prof. André Abbud and Mr. Jeffrey Rosenthal introduced an important and current discussion relating to the challenge of arbitrators.

Prof. Abbud opened his speech indicating that, according to Prof. Selma Lemes' annual research, there was an increase of only one-point percentual on challenges of arbitrators since last year. There was, however, an uncontroversial increase in the perception of challenges proceedings. He justifies this mainly due to the publicity obtained on relevant cases on the media and the different reasonings adopted by judges when analyzing this issue. He wrapped up his considerations indicating the importance of developing good research materials that are fundamental for deepen analysis on circumstances for challenge of arbitrators.

Ms. González in response explained that they do not have very often challenges in Uruguay, since

they do not have many arbitral proceedings. Based on her experience however as a member of the [ICC Court](#), she commented that the number of challenges is directly related to the increasing number of arbitrations. Furthermore, she touched upon many hot topics of the moment, such as the duty to disclose of arbitrators and the relevance of the context for each disclosure.

After that, Ms. Pasipanodya commented on who should be responsible for deciding the challenges. First, she pointed out that many jurisdictions define that the other members of the arbitral tribunals should be responsible for deciding. Others, as Brazil, puts this competence to the president and vice-presidents of the arbitral institution or even members of a separate group, as it is the case of the [ICC Court](#). Prof. Abbud pointed out the possibility to penalize the parties with fees for inadequate challenges and to limit the request for supplemental disclosures.

Finally, Mr. Rosenthal discussed the sources for the challenges. He referred to the arbitral institutions rules, the [IBA Guidelines](#) and [CBAR Guidelines](#) regarding independence. Beyond that, he also detailed the importance of case law whose position may vary from place to place. To exemplify this topic, he referred to the [Abengoa Case](#) in which U.S. Courts had a different understanding from Brazilian courts regarding standards of independence and impartiality of arbitrators. In this case the award that was enforced by the U.S. Court had its recognition denied by the Brazilian Superior Court due to the lack of independence of one of the arbitrators. Finally, he emphasized the importance of analyzing this issue taking into consideration both the seat of the arbitration and the place of its enforcement.

## Conclusion

The first day of the X CAM-CCBC Congress was very productive and brought into discussion conventional subjects, but with their current legal framework and through innovative approaches. It also allowed friends and colleagues to meet in person, who looked forward to attending the second day of the Congress.

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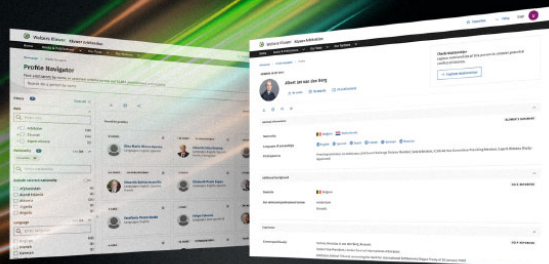
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