

The Milan Chamber of Arbitration Revises Its Rules Following Italy’s Reform of Civil Procedure and Arbitration

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The Milan Chamber of Arbitration (*Camera Arbitrale di Milano* or “CAM”), Italy’s main arbitral institution, adopted new revisions to its arbitration rules, which entered into force on March 1, 2023 (the “2023 CAM Rules”).¹ This revision follows two previous revisions in 2019 and 2020,² which partly anticipated the contents of an upcoming reform of arbitration law in Italy. Following the enactment of Italy’s reform of its civil procedure and arbitration, which likewise came into effect on March 1, 2023 (the “Reform”),³ CAM now further aligns its rules to the revised Italian *lex arbitri*. The 2023 CAM Rules apply to all arbitral proceedings commenced on or after March 1, 2023. Its key revisions concern: (1) the Arbitral Tribunal’s power to issue conservatory and interim measures; (2) Emergency Arbitration proceedings; and (3) other amendments reflecting recent international arbitration practice.

1. Interim and Provisional Measures

The sweeping reform of the Italian civil procedure included some meaningful innovations concerning Italy’s arbitration rules. Most notably, the Reform introduced the much-awaited possibility for the parties to confer the Arbitral Tribunal exclusive jurisdiction to issue interim measures “*even by making reference to rules of an arbitral institution.*”⁴

Prior to the Reform (and still to this date with regards to proceedings commenced before March 1, 2023), Italian law expressly prevented Arbitral Tribunals from issuing interim relief “*unless the law provides otherwise.*”⁵

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¹ The 2023 CAM Rules are available in English [here](#), along with the 2020, 2019 and 2010 Rules.

² See our related alert memoranda of [April 8, 2019](#) and [July 30, 2020](#).

³ See Legislative Decree dated October 10, 2022, No. 149.

⁴ See Article 818 of the Italian Code of Civil Procedure (as amended by Legislative Decree No. 149/2022).

⁵ See Article 818 of the Italian Code of Civil Procedure (prior to the amendments introduced by Legislative Decree No. 149/2022).



Previous versions of the CAM Rules already provided that the Arbitral Tribunal could issue interim and provisional measures “*that are not barred by mandatory provisions applicable to the proceedings*” (Article 26), but this provision remained largely in the books for Italy-seated arbitrations.

As the Reform came into effect, a few amendments were introduced to Article 26 of the 2023 CAM Rules. Namely, the CAM:

- (i) Confirmed the Arbitral Tribunal’s power to “*grant all urgent and provisional measures of protection, also of anticipatory nature, that are not barred by mandatory provisions applicable to the proceedings*”, adding that this power can be excluded by contrary agreement of the parties (“*unless otherwise agreed by the parties.*”)⁶

The addition is consistent with the reformed Article 818 of the Italian Code of Civil Procedure, according to which the decision to confer jurisdiction on interim measures upon the Arbitral Tribunal rests with the parties.

- (ii) Repealed the Arbitral Tribunal’s power in Article 26.2 to “*adopt any determination of provisional nature with binding contractual effect upon the parties.*”⁷

The repealed language allowed the Arbitral Tribunal to issue provisional measures with contractual effects only, based on a narrow interpretation of the former prohibition set forth by Italian law on Arbitral Tribunal-issued provisional measures. Pursuant to such narrow interpretation, the prohibition only concerned measures the enforcement of which required the taking of coercive action (e.g., through a bailiff or other court officer), and arguably not provisional measures having a contractual nature. Following the Reform, any provisional measures can be issued by Arbitral Tribunals, regardless of their nature, and the repealed language no longer served its original purpose.

- (iii) Introduced the possibility for the Arbitral Tribunal to issue preliminary measures “*without notice to the other party, if such notice would seriously prejudice/affect the applicant’s interests.*”⁸ In this case, with the decision granting the application, the Arbitral Tribunal:

1. Schedules a hearing within ten days;
2. May set deadlines for the submission of briefs; and
3. Must either confirm, amend or revoke its *ex parte* order at the hearing or within the following five days.

No amendments were introduced to paragraphs 3-4 of Article 26, providing that:

- (i) The Arbitral Tribunal may order the party requesting an interim measure to provide appropriate security for costs as a condition to grant the measure; and
- (ii) Any request for interim measures made by a party to a judicial authority does not imply any waiver of the effects of the arbitration agreement or of the request for arbitration.

Even following the Reform, Italian State Courts retain exclusive jurisdiction regarding:

- (i) Appeals against interim orders issued by Arbitral Tribunals;⁹
- (ii) The enforcement of interim measures;¹⁰ and
- (iii) Interim measures applications made prior to the constitution of the Arbitral Tribunal.¹¹

2. Emergency Arbitration

Pursuant to Article 44 of the Rules, unless “*otherwise agreed by the parties, prior to the constitution of the Arbitral Tribunal,*” any party may request the appointment of an emergency arbitrator to seek “*urgent and provisional measures of protection*”.

The key amendments to Article 44 introduced by the 2023 CAM Rules are as follows:

⁶ See Article 26.1 of the 2023 CAM Rules.

⁷ See Article 26.2 of the 2019 and 2020 Rules.

⁸ See Article 26.2 of the 2023 CAM Rules.

⁹ See Article 818-*bis* of the Italian Code of Civil Procedure.

¹⁰ See Article 818-*ter* of the Italian Code of Civil Procedure.

¹¹ See Article 818 of the Italian Code of Civil Procedure (as amended by Legislative Decree No. 149/2022).

- (i) Emergency arbitration is now available to all parties, and not only to those whose arbitration agreement was concluded after March 1, 2019, i.e., after the entry into force of the 2019 Rules that first introduced this mechanism into the CAM Rules.

The new wording of Article 44 eliminated a discrepancy in the *ratione temporis* application of the prior version of the Rules, which were applicable to all arbitration proceedings instituted post-March 1, 2019 (for the 2019 Rules) and July 1, 2020 (for the 2020 Rules), while the emergency arbitration was only available if the arbitration agreement was concluded post-March 1, 2019.

- (ii) The application for the appointment of an emergency arbitrator may now be filed “*prior to the constitution of the Arbitral Tribunal*,”¹² rather than “*prior to the confirmation of the Arbitrators*”¹³ as in the prior version of the Rules. The new deadline is consistent with the practice of other arbitral institutions.¹⁴
- (iii) The CAM will appoint the Emergency Arbitrator “*as soon as possible*” and in any event within five days from the filing of the application.¹⁵ In adding the words “*as soon as possible*” to the already short five-day deadline, the CAM demonstrated its commitment to expeditiousness when dealing with emergency arbitration applications. As a result, the emergency arbitration will last a maximum of 20 days from the filing of the application to the date of the emergency award.
- (iv) The Emergency Arbitrator will issue the requested provisional measures by way of a provisional order where he/she deems that the application is “*grounded*.”¹⁶ The 2023 CAM Rules thus lower the threshold from “*manifestly grounded*”¹⁷ to “*grounded*,” in line with the purpose of reducing the differences between the standards required to obtain interim

relief before Italian State Courts and Arbitral Tribunals.

- (v) The Arbitral Tribunal upon its constitution may modify or revoke the emergency award. The new Article 44.8 eliminated the reference to a “*challenge*” of the award before the Tribunal.¹⁸ This is consistent with the newly introduced Article 818-*bis* of the Italian Code of Civil Procedure, pursuant to which Italian State Courts retain exclusive jurisdiction on the challenge of decisions on interim measures issued by Arbitral Tribunals.¹⁹
- (vi) The filing of a request for arbitration is no longer a condition for the effectiveness of the emergency measure: the revised Article 44.9 no longer contains the wording “*failing such a condition, the emergency measure become ineffective*.”²⁰ Here too, the Rules appear to conform with the principle applying to litigation before Italian State Courts, where the party obtaining interim relief is not required to initiate a merits proceedings, when – in practice – the interim relief serves the same purposes of a final judgment (e.g. injunctions restraining foreclosure of a bond).²¹

It is not entirely clear and practice will hopefully clarify whether, in light of the Reform, emergency arbitration is an avenue open to Italy-seated arbitrations. As noted, although Italian law now allows the parties to confer exclusive jurisdiction on interim measures to an Arbitral Tribunal, Article 818, para. 2 of the Italian Code of Civil Procedure mandates that “*before the constitution of the Arbitral Tribunal (or the Sole Arbitrator’s acceptance of its appointment)*” applications for interim relief shall be filed before the competent State Court.

3. Further Amendments to the 2020 Rules

The CAM introduced further amendments reflecting recent international arbitration practice. Most

¹² See Article 44.1 of the 2023 CAM Rules.

¹³ See Article 44.1 of the 2019 Rules.

¹⁴ See Article 29 of the ICC Rules.

¹⁵ See Article 44.2 of the 2023 CAM Rules.

¹⁶ See Article 44.3 of the 2023 CAM Rules.

¹⁷ See Article 44.3 of the 2019 and 2020 Rules.

¹⁸ See Article 44.8 of the 2019 and 2020 Rules.

¹⁹ See Article 44.8 of the 2023 CAM Rules.

²⁰ See Article 44.9 of the 2023 CAM Rules.

²¹ See Article 669-*octies*, para. 6 of the Italian Code of Civil Procedure.

significantly, the CAM:

- (i) May now publish – for research purposes – also “*orders and measures of the arbitrators*,” in addition to redacted arbitral awards (Article 8, para. 2).
- (ii) Allowed the parties to request that the violation of the rules concerning the constitution of the Arbitral Tribunal be ruled upon with an award (Article 23, para. 2).
- (iii) Amended the content requirements concerning requests for arbitration in the simplified arbitration procedure available under the 2023 CAM Rules (Article 2, Appendix D to the Rules).²² The requests for simplified arbitration, as well as the answers to such requests, are no longer inadmissible if they do not specifically allege the facts which each exhibit is intended to prove.

The 2023 CAM Rules also clarify that should a procedural objection or counterclaim by the defendant be advanced in the simplified arbitration, the plaintiff shall submit a reply within 15 days, containing its statement of defense and any other argument or document the party may deem to submit.²³

Conclusion

Having significantly amended its Rules in 2019, in advance of Italy’s reform of its civil procedure and arbitration and partially anticipating its content, the purpose of the 2023 CAM Rules amendments is to fine-tune the Rules to the innovations introduced by the Reform.

The new Rules also signal to arbitration users that the CAM remains committed to efficiency and to fostering the reputation of Italy as a reliable and arbitration-friendly jurisdiction.

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²² Such procedure was introduced in the wake of the Covid-19 Pandemic to expedite the proceedings and reduce the costs of less complex cases. The Simplified Rules allow the parties to obtain an arbitral award within 3 months from the constitution of the sole arbitrator, thus saving around 30 percent of costs compared to the

ordinary procedure. See our alert memorandum “*The Milan Chamber of Arbitration adopts new measures in the wake of Covid-19 pandemic*,” accessible [here](#).
²³ See Article 2, Annex D of the 2023 CAM Rules.