



## •ALERT•

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# Milan Chamber of Arbitration enacts new Arbitration Rules

On March 1<sup>st</sup>, 2019, the Milan Chamber of Arbitration, or "CAM", has published its new **Arbitration Rules**, applicable to all proceedings commenced from the same date.

The new Rules are the result of the CAM's practices and experience, as well as of recent developments in the world of national and international arbitration.

We will highlight the most important new provisions.

### THE DUTY OF FAIR CONDUCT (RULE 9)

It is expressly stated that all players of the arbitration have a **duty to act in good faith**: parties, counsel, arbitrators, experts, and even the Chamber itself.

The Arbitral Tribunal will have the power to sanction any breach of its decisions and any conduct that is contrary to good faith. In the allocation of costs, the Arbitral Tribunal may take into consideration the unfair conduct of the parties or their counsel.

### CORPORATE ARBITRAL PROCEEDINGS (RULE 17)

In Italy, special rules apply to corporate arbitral proceedings (i.e., arbitral proceedings between shareholders and/or shareholders and the company, or between corporate bodies, where an arbitration clause is included in the articles of association). In such proceedings, arbitrators must be appointed by an authority not connected with the company. Under the new Rules, if the articles of association do not designate an appropriate appointing authority, the arbitrator(s) will be appointed by the **Arbitral Council**.

### INTERIM OR URGENT MEASURES (RULE 26)

As with the previous Rules, the Arbitral Tribunal may issue urgent and provisional measures, unless prohibited by mandatory applicable legal provisions. A very interesting new Rule grants the Arbitral Tribunal the power to adopt any determination of provisional nature, with **binding contractual effect** upon the parties.

Such provisional determinations may be conditional upon appropriate security for costs.

### THIRD PARTY FUNDING (RULE 43)

Third party funding is spreading in the arbitration world, and this is timely registered by the CAM. As in other reputed arbitral institutions worldwide, there will be a duty of **disclosure**: the funded party will be required to disclose the existence of the funding and the identity of the funder.

### EMERGENCY ARBITRATOR (RULE 44)

In case of arbitration agreements entered into after March 1<sup>st</sup>, 2019, emergency arbitration will be available. This procedure will only be aimed at provisional or interim measures, and will not be a fast-track or expedited arbitration. The party may apply for such measures before the confirmation of the arbitrators, and the application may be upheld only if it is **manifestly grounded**.

The emergency procedure will be concluded in no more than 20 days since the filing of the application. Proceedings on the merits will need to be instituted within a deadline set by the emergency arbitrator, which will be no later than 60 days since the filing of the application.

#### CONTACTS

**Gian Paolo Coppola**  
gianpaolo.coppola@lcalex.it

**Chiara Bocchi**  
chiara.bocchi@lcalex.it