

## CARACAS CHAMBER OF COMMERCE

### MODIFIES ITS RULES ON ARBITRATION

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The Caracas Chamber of Commerce (“CCC”), after one year and a half of practical operation of its General Rules (“Rules”), issued in 1998 according to the Commercial Arbitration Law of such year, has modified said Rules in order to improve them, in view of their actual application experience in that period.

It is difficult to overstate the importance of arbitration in Venezuela at this moment, and the CCC’s Arbitration Center is arguably the most important institutional organization that provides this procedure. Thus the significance of these changes.

Most of the changes have been in the arbitration procedure itself, but there have been other modifications regarding the constitution of the Executive Committee and its designation, as well as an increase in fees and other costs. Additionally, the Rules establish mediation, an informal conciliation procedure loosely based on the Constitution of 1999 and well-known dispute resolution formulae in other jurisdictions.

With respect to the arbitration procedure, the changes tend to clarify and improve on the former system.

A very important modification is contained in Article 6 of the Rules, regarding the law applicable to the arbitration procedure, for it expressly states that the procedural rules to be applied are *“those chosen by the parties in the arbitration clause or in the arbitration agreement, the provisions of the present Rules, and in case of silence, the Commercial Arbitration Law.”*<sup>1</sup> It is interesting to note that the arbitration tribunal may decide, if any other legal vacuum arises, which procedural rules to apply.

The calculation of periods is now made on the basis of working days, that is, every day except Saturday, Sunday and national holidays, also excepted are those declared non working days by other rules of obligatory compliance or by the Executive Committee.<sup>2</sup>

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<sup>1</sup> Rules. Article 6.

<sup>2</sup> Rules. Article 2, Numeral 8.

The definitions provided in Article 1 include another significant change, regarding the date of issuance of the arbitration award. It is now firmly established that the award is issued on the date the Executive Director of the Arbitration Center notifies said award to the parties.<sup>3</sup> The significance of this modification regards the appeal that can be made—only on grounds of nullity—against the award. The period of time established for such an appeal starts from the moment the award is issued, according to the Commercial Arbitration Law.<sup>4</sup>

Regarding the number of arbitrators to be chosen, there has been another important change. If the parties have not agreed on that point, the Tribunal will be formed by three members, unless the Executive Committee considers that the matter is susceptible of being decided by just one arbitrator. This new ruling inverts the previous procedure, in which the Executive Committee designated one arbitrator unless it deemed that three arbitrators were necessary<sup>5</sup>.

Should the arbitration tribunal have three members, the parties shall designate one each. The third arbitrator (who shall be President of the tribunal) shall be chosen by the other two within 10 working days from the approval of the second arbitrator, or, lacking such a decision, by the Executive Committee<sup>6</sup>. This clarifies the provision, an important matter, since it had been interpreted as meaning that the parties chose the third arbitrator.

A new item is introduced by the Rules, the “Record of Constitution of the Arbitration Tribunal”.<sup>7</sup> It merely records the first hearing of the arbitration procedure, simply setting down the identification of each party and its representatives, and the place, date and time of the hearing<sup>8</sup>. The Stated Purpose of the Rules (“*Exposición de Motivos*”) explains that it was considered necessary to have such a record of the first hearing, since the more complete contents of the Terms of Reference normally are not ready in time for that first hearing.

Based on the above modification, the Rules now state that the 6 months within which the tribunal must dictate the arbitration award start on the date of the Terms of Reference.<sup>9</sup> This is a consequence of the nature of the Terms of Reference, since they state the arbitrators’ determination of the subject to be decided, thus the period of time allowed for the decision should start after said determination.

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<sup>3</sup> Rules. Article 2, Numeral 11.

<sup>4</sup> Commercial Arbitration Law. Article 43. “*Against the arbitration award there is only the appeal to declare it null and void . It should be filed in writing before the competent Superior Court of the place of issuance of the award, within five (5) business days following the notice of the award or of the act correcting, clarifying or complementing it. The records of the arbitration tribunal must be enclosed with the application filed.*”

<sup>5</sup> Rules. Article 39.

<sup>6</sup> Rules. Article 40.

<sup>7</sup> Rules. Article 49.

<sup>8</sup> Rules. *Exposición de Motivos*.

<sup>9</sup> Rules. Article 57. Article 50 states that the date of the Terms of Reference is that in which the last party should sign said record, or in case of a refusal, the last day of the period set for signing.

Another important change regards the objection to jurisdiction. Formerly, the Rules were silent in that respect, therefore Article 25 of the Commercial Arbitration Law was applied. The new Rules state that the parties may enter an objection to jurisdiction at any moment before the first hearing (that of the constitution of the arbitration tribunal).<sup>10</sup> This objection shall be decided by the tribunal in the final arbitration award.<sup>11</sup>

As stated above, the Rules establish “Rules for Mediation”. Conciliation procedures are known in Venezuelan law, but have not been very successful in practice<sup>12</sup>. The Constitution of 1999 states that “*the law will promote arbitration, conciliation, mediation and other alternative methods for the settlement of conflicts.*”<sup>13</sup> Based on that article, and disregarding the fact that the Commercial Arbitration Law does not cover conciliation procedures, the CCC proceeded to regulate mediation in the new Rules, since in other countries such procedures have become widely used and very successful.<sup>14</sup>

The mediation procedure established by the CCC is defined as “*the mechanism whereby the parties in conflict seek an agreement under the counsel and advice of a mediator.*”<sup>15</sup>

Its main characteristics are:

- It is an essentially voluntary procedure. The parties decide whether or not to participate and they may end the procedure whenever they so desire, not being forced to reach an agreement.
- It is a confidential procedure for all parties concerned, including the mediator.<sup>16</sup>
- The procedural mechanisms are expeditious, flexible and informal, —“*an opportunity for common sense*”,<sup>17</sup> thus there is no need for the assistance of an attorney.
- The parties are directly involved in the process of negotiating and searching for a solution, their legitimate interests being thus protected.

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<sup>10</sup> Rules. Article 38.

<sup>11</sup> Rules. Article 59.

<sup>12</sup> Civil Procedure Code, Labor Organic Law, Consumer and User Protection Law, Justice of Peace Organic Law.

<sup>13</sup> Constitution. Article 258.

<sup>14</sup> For a description of such use of conciliation procedures see: ZHU JIANLIN. “Alternate Dispute Resolution in the Context of Chinese Commercial Law”. *International Arbitration Law Review*. Volume 2, Issue 5 & 6. December 1999.

<sup>15</sup> Rules. Article 54.

<sup>16</sup> Rules. Article 78.

<sup>17</sup> Rules. Stated Purpose.

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—The mediator is described as an impartial and neutral third party, an individual trained to intervene in conflictive situations, who takes no decisions, for decisions are taken by the parties with his help and intervention.<sup>18</sup>

The mechanism of mediation established by the CCC may be briefly described as follows: A written request, identifying the parties, the conflict object of the mediation, and its estimated value must be presented to the Arbitration Center. The Executive Director will then notify the parties. The Executive Committee will designate the mediator from the CCC's list of mediators, unless the parties agree otherwise. Should an agreement be reached, the mediator will elaborate a Record of Mediation, which may be agreed with totally or in part. The Record of Mediation shall be signed by the parties and mediator and shall clearly state each party's obligations, the period of time set for compliance, the amount and other points agreed on. If there is no agreement, the mediation will conclude and a corresponding record will be written and signed by the parties and the mediator<sup>19</sup>.

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<sup>18</sup> Rules. Stated Purpose.

<sup>19</sup> Rules. Articles 69 to 76.