The CAM-CCBC's New Corporate Arbitration Rules

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In effect since April of this year, the new rules seek to improve corporate arbitrations where the decision may affect third parties that are neither claimant nor respondent in the proceeding, addressing difficulties frequently encountered in practice.

Following the trend started by arbitration chambers internationally, on April 26 of this year the Arbitration and Mediation Center of the Brazil-Canada Chamber of Commerce (CAM-CCBC) issued rules applicable specifically to corporate arbitrations involving multiple parties with the same interest, under Supplementary Rule NC 02/2023.

According to data from 2021, 61% of all companies listed on Brazil's stock exchange, the B3, have arbitration clauses in their bylaws; considering only the companies that compose the Ibovespa index, the percentage is close to 82%.

Given this scenario, arbitrations involving corporate disputes in which the arbitrators' decision will affect not just the parties to the proceeding but third parties as well (such as shareholders, investors, and members of management) are frequent.

The movement toward arbitration rules that address the peculiarities of this kind of dispute is welcome, especially in the case of rules to ensure uniformity of the effects of arbitral decisions and to provide procedural guarantees for affected third parties.

Although they have not yet been tested in practice, the CAM-CCBC's new rules seem to be positive. Article 1 establishes the cumulative criteria that must be met for the new rules to apply: (i) the award in the arbitration may affect not just the claimant and respondent parties but also the rights and obligations of the corporate entity (whether corporation, limited liability company or association) and those of the entity's shareholders, partners, members, or members of management, (ii) the nature of the dispute submitted to arbitration requires a uniform decision for all those affected by the arbitral award, and (iii) the entity's bylaws or articles of association contain an arbitration clause that submits the dispute to arbitration administered by the CAM-CCBC under its rules.

Articles 4 and 5 contain specific rules on notifying third parties of the arbitration, and on the potential inclusion of interested third parties in arbitrations subject to the new rules. These provisions are intended to confer greater legal certainty to corporate arbitrations by ensuring that third parties are made aware of arbitrations that may affect their interests and have the opportunity to intervene in the arbitration if they wish to do so.

The CAM-CCBC intended articles 4 and 5 to operate harmoniously with

Annex I of CVM Resolution 80, which was issued by Brazil's securities regulator, the Comissão de Valores Mobiliários, in 2022. Annex I to the Resolution (which deals with the disclosure obligations of listed companies generally) governs disclosure of information concerning litigation involving the issuer or its shareholders or members of management and provides that "in the case of listed companies required to publish releases on corporate litigation, the Notice to Affected Third Parties may be published in the manner applicable to releases, as provided for in the rules issued by the Securities Commission."

After being notified of the dispute submitted to arbitration, third parties (whether natural persons or legal entities) have 30 days to inform the CAM-CCBC whether they will join the arbitration proceeding as a party or will "merely observe the arbitration", as provided for in article 7 of the rules. After the 30-day period has expired, third parties that wish to join the arbitration must accept the proceeding in the state it is at the time they join, including the formation of the arbitral tribunal.

How effective the new rules will be will depend on how they are applied in practice. Still, shareholders and companies should start taking the new rules into account when negotiating arbitration agreements and in assessing pre-litigation and litigation scenarios involving corporate disputes subject to arbitration in the CAM-CCBC.

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