

Administrative Resolution No. 06/20

Related to: Arbitration
Re: Emergency Arbitrator Procedure

The President of CAMARB – Chamber of Business Mediation and Arbitration – Brazil, in the exercise of his powers provided for in the Bylaws, and considering:

- i. the publication of the Arbitration Rules (2019), in force from 12 August 2019;
- ii. the provisions of items 9.4, 9.5 and 9.6 of the 2019 CAMARB Arbitration Rules;

Resolves to regulate the specific procedure of the Emergency Arbitrator and the respective costs.

I. GENERAL PROVISIONS

1.1. The party who is interested in requesting urgent, injunctive or provisional relief, before the beginning of the jurisdiction of the Arbitral Tribunal, must do so by electronic mail or registered letter, in a request accompanied by all the documents necessary for its preparation.

1.2. The request must be written in the language of the arbitration.

1.3. Unless otherwise provided, the Emergency Arbitrator procedure only applies to arbitrations arising from an arbitration agreement signed after August 12, 2019, the date on which the CAMARB Arbitration Rules, which provided for this procedure, came into force.

1.4. All communications from the CAMARB Secretariat, when the Emergency Arbitrator procedure is adopted, will be sent only by email, unless otherwise agreed. If the recipient does not expressly confirm receipt, confirmation of delivery of the message to the recipient will be considered valid.

II. APPLICATION

2.1. The request for the submitted relief must contain:

- (a) the name and full qualifications, including physical and electronic addresses, of the applicant and their lawyers;
- (b) the name and full qualification, including physical address and, if applicable, electronic address of the respondent;
- (c) a full copy of the instrument containing the arbitration agreement or a copy of an express agreement providing for the application of the rules relating to the Emergency Arbitrator procedure;
- (d) the facts and grounds on which the applicant believes that relief is necessary before the constitution of the Arbitral Tribunal;
- (e) the description of the main dispute submitted or to be submitted to CAMARB;

(f) all documents that the applicant deems necessary to demonstrate the appropriateness of the protection;

(g) proof of payment of costs relating to the Emergency Arbitrator procedure, pursuant to item 9.1 of this Resolution.

III. PRELIMINARY ANALYSIS

3.1. The President of CAMARB or, in their absence or impossibility, the Vice-President of Arbitration of CAMARB will assess the request and preliminarily reject it if at least one of the following hypotheses occurs:

(a) when there is an Arbitral Tribunal constituted under item 6.3 of the CAMARB Arbitration Rules;

(b) when the parties involved, or their successors, are not the signatories of the arbitration agreement, as well as when they are not the parties to an express agreement providing for the application of the rules relating to the Emergency Arbitrator procedure;

(c) when the arbitration agreement mentioned in item 2.1.(c) of this Resolution does not provide for the administration of the procedure by CAMARB;

(d) unless otherwise provided, when the arbitration agreement is prior to August 12, 2019

(e) when all parties have agreed to exclude the application of the Emergency Arbitrator procedure;

(f) when the parties have agreed on the exclusive jurisdiction of the judicial authority to assess urgent measures in the pre-arbitration phase;

(g) when there is no proof of payment of the costs relating to the Emergency Arbitrator procedure.

3.2. The President or, in their absence or impossibility, the Vice-President of Arbitration of CAMARB may terminate the Emergency Arbitrator procedure if no arbitration related thereto is initiated within 30 (thirty) days following the date on which the parties are notified of the decision on the preliminary analysis provided for in item 3.1.

IV. APPOINTMENT OF EMERGENCY ARBITRATOR

4.1. Once the Request has been accepted, the President of CAMARB individually or, in their absence or impossibility, the Vice-president of Arbitration of CAMARB, together with another Vice-president, will appoint, within 2 (two) days, an Emergency Arbitrator from among the members of the List of Arbitrators of CAMARB.

4.2. The Secretariat will then send a copy of the request and the accompanying documents to the respondent and, simultaneously, notify the appointed arbitrator so that, within 2 (two) days of receiving their appointment electronically, they can state their availability, non-impediment, independence and impartiality.

4.3. The Emergency Arbitrator may not act as an arbitrator in any arbitration related to the dispute that gave rise to the Request for Emergency Arbitration, unless expressly authorized by the parties.

4.4. Should there be a need to replace the Emergency Arbitrator, the appointment must be made in the manner provided for in this Resolution for initial appointment and, additionally, in the CAMARB Arbitration Rules.

V. CHALLENGE OF EMERGENCY ARBITRATOR

5.1. Any challenge to the Emergency Arbitrator must be presented within 2 (two) days of receipt of the statement from the designated professional, in accordance with item 4.2 of this Resolution.

5.2. In the event of an objection, the arbitrator will be notified by the CAMARB Secretariat to respond within 2 (two) days, after which the parties will be granted access to the case for the same period.

5.3. The challenge will be decided individually by the President of CAMARB or by the Vice-President of Arbitration of CAMARB.

5.4. The party filing an objection must, at the time of filing the objection, pay the Emergency Arbitrator's objection fee, in accordance with item 9.3 of this Resolution. The final responsibility for this expense will be set out in the Emergency Arbitrator's decision or in the award rendered by the Arbitral Tribunal.

5.5. The decision must be issued within 2 (two) days from the notification to the President or Vice-President of Arbitration of CAMARB, and this period may be extended by an act of the President of CAMARB.

VI. LOCATION OF EMERGENCY ARBITRATOR PROCEEDINGS

6.1. The seat of the emergency proceedings shall be the seat of the arbitration. If there is no agreement on the seat of the arbitration, the director who considers the Request shall determine the seat of the Emergency Arbitrator proceedings.

6.2. Any meetings of the Emergency Arbitrator with the parties may be conducted physically at any location the Emergency Arbitrator deems appropriate, or by means of video conference, telephone or other similar means of communication, at the discretion of the Emergency Arbitrator.

VII. EMERGENCY ARBITRATOR PROCEDURE

7.1. Immediately after the Emergency Arbitrator's ruling pursuant to item 4.2 of this Resolution, the CAMARB Secretariat shall notify the parties thereof. If there is no objection, all written communication from the parties thereafter shall be addressed directly to the Emergency Arbitrator, with a copy to the other party(ies) and to the CAMARB Secretariat.

7.2. At the same time, the CAMARB Secretariat will send an electronic copy of the records to the Emergency Arbitrator who, as soon as possible, must establish a schedule for the procedure.

7.3. The Emergency Arbitrator shall decide on the procedure to be adopted, being responsible for conducting it quickly and efficiently, taking into account the nature and urgency of the measure, as well as the principles of the due process of law.

VIII. ON THE DECISION OF THE EMERGENCY ARBITRATOR

8.1. The orders and decisions issued by the Emergency Arbitrator must be substantiated in writing and must comply with the requirements for issuing the award contained in the CAMARB Arbitration Rules applicable to the arbitration proceedings.

8.2. The decision of the Emergency Arbitrator must be issued within 15 (fifteen) days from the end of the term indicated in item 5.1 of this Resolution and, in the event of an objection, in accordance with item 5.5. The President or, in their absence or impossibility, the Vice-President of Arbitration of CAMARB may extend this term ex officio or upon a reasoned request from the Emergency Arbitrator.

8.3. In their decision, the Emergency Arbitrator shall determine whether they have jurisdiction to order the relief requested. The Emergency Arbitrator may impose measures aimed at enforcing their decisions, including punitive fines and the provision of guarantees.

8.4. Notification of the Emergency Arbitrator's decision to the parties, with a copy to the CAMARB Secretariat, will be made in accordance with item 7.1 of this Resolution.

8.5. When submitting the dispute to the Emergency Arbitrator, the parties undertake to immediately comply with the decisions that are handed down by the Emergency Arbitrator.

8.6. The decision of the Emergency Arbitrator shall not be binding on the Arbitral Tribunal of the main arbitration proceeding, with respect to any issue, topic or controversy determined in such order or decision. The Arbitral Tribunal, as soon as constituted, may reconsider the request of the party, maintaining, modifying or revoking, in whole or in part, the relief granted by the Emergency Arbitrator.

8.7. Upon termination of the jurisdiction of the Emergency Arbitrator, the Arbitral Tribunal shall decide any request of the parties relating to the Emergency Arbitrator procedure, including any claim relating to the enforcement of the decision rendered by the Emergency Arbitrator and the reallocation of the costs of the Emergency Arbitrator procedure.

8.8. The decision of the Emergency Arbitrator shall cease to be binding on the parties if, for any reason, the main arbitration ends without the rendering of a final arbitral award.

IX. COSTS OF THE EMERGENCY ARBITRATOR PROCEDURE

9.1. The requesting party must deposit the amount of R\$60.000,00 (sixty thousand reais) at the time of filing the application, which includes:

(a) Emergency Arbitrator's Fees, set at R\$40.000,00 (forty thousand Reais);

(b) CAMARB administrative fees, set at R\$15.000,00 (fifteen thousand Reais);

(c) Advance payment of expenses in the amount of R\$5.000,00 (five thousand Reais).

9.2. The CAMARB Secretariat may request new advance payments of expenses from the requesting party whenever necessary.

9.3. Any objection to the Emergency Arbitrator must be accompanied by proof of payment of an administrative fee in the amount of R\$5.000,00 (five thousand Reais).

9.4. The costs associated with the Emergency Arbitrator procedure shall be determined and allocated between the parties by the Emergency Arbitrator, including those provided for in items 9.1 and 9.3 of this Resolution, as well as other expenses incurred by the parties in the course of the Emergency Arbitrator procedure, without prejudice to the powers of the Arbitral Tribunal to determine in a final manner the allocation of such costs.

9.5. If the Emergency Arbitrator procedure is terminated before a decision is rendered, the President or, in their absence or impossibility, the Vice-President of Arbitration of CAMARB shall decide whether part of the amount initially collected should be reimbursed to the requesting party, if applicable. The amount of R\$15.000,00 (fifteen thousand reais) of administration fee shall not be reimbursed under any circumstances.

9.6. The President of CAMARB may, at any time during the Emergency Arbitrator's proceedings, decide to increase the Emergency Arbitrator's fees or CAMARB's administrative fee, taking into account the nature and complexity of the case, as well as the extent of the work performed by the Emergency Arbitrator and CAMARB. If the applicant fails to pay the expenses arising from the increase within the period stipulated by the CAMARB Secretariat, the Application shall be terminated.

X. FINAL PROVISIONS

10.1. The arbitration procedure will be strictly confidential, and CAMARB, the Emergency Arbitrator, other professionals working on the case and the parties themselves are prohibited from disclosing any information to which they have access as a result of their office or their participation in the process, without the consent of all parties, except in cases where there is a legal obligation to disclose and as provided for in the CAMARB Arbitration Rules.

10.2. CAMARB is authorized, by the parties and the Emergency Arbitrator, to disclose excerpts of the arbitration decisions for academic and informative purposes, suppressing the names of the parties, the arbitrator and other information that allows the identification of the case.

10.3. The Emergency Arbitrator shall be responsible for interpreting and applying this Resolution, including with regard to their competence, duties and prerogatives.

10.4. After 5 (five) years from the issuing of the decision by the Emergency Arbitrator, CAMARB is authorized to discard the case files, with only the decisions remaining archived.

10.5. The parties are entitled to request the withdrawal of any documents they have submitted before the end of the period provided for in item 10.4.

10.6. Any omissions shall be governed by Law No. 9.307 of September 23, 1996, as amended by Law No. 13.129 of May 26, 2015, and by the treaties and conventions on arbitration that are applicable in Brazilian territory. Any omissions shall be resolved by the Emergency Arbitrator or by the President or, if the latter is not possible, by the Vice-President of Arbitration of CAMARB, if the former has not yet been appointed. In the latter case, the decision may be reviewed by the Emergency Arbitrator after their appointment.

10.7. The Communications area and the Chamber Secretariat must arrange for the publication of this Administrative Resolution on the institution's website.

Belo Horizonte, January 29, 2020

Augusto Tolentino
President of CAMARB