The Madrid International Arbitration Centre Takes off Powered by the Unification of Spain's Largest Arbitral Institutions

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The swift and far-reaching development experienced by arbitration in Spain over the past few decades is unprecedented in the context of other arbitration-friendly jurisdictions. In little more than 40 years, a fully-fledged arbitration system was set up virtually from scratch. In 1977 Spain ratified the New York Convention without reservation, thus entering the international arbitration legal order. The ICSID Convention was ratified in 1994. The enactment of the 2003 Spanish Arbitration Act turned Spain into a genuine UNCITRAL Model Law country, thus paving the way for the consolidation of Spain as an attractive and reliable international arbitration venue.

More importantly, Spain boasts a sophisticated and vibrant arbitration community. The Spanish Arbitration Club (CEA) has played a prominent role in both promoting the use of arbitration in the Spanish and Portuguese languages, with a special focus on Latin America, and developing enhanced ethical standards, upon which trust in arbitration ultimately depends. Launched in June 2019, the Code of Best Practices in Arbitration of the Spanish Arbitration Club epitomizes CEA's untiring commitment to consolidating society's confidence in arbitration.

It is hardly a coincidence that this arbitration expansion would take place during the most prosperous and dynamic economic cycle that the country has enjoyed so far. Spain is currently the fourth economy of the Euro zone and the fourteenth economy worldwide. It is the sixth most open country in the world in terms of internationalization of its economy.[fn]Source UNCTAD, IMF.[/fn] Goods and services exports account for 32.1% of its GDP.[fn]Ibid.[/fn] This unmatched period of economic growth, and the profound socio-economic transformation that it entailed, was underpinned by democracy, free-market economy and the rule-of-law, all of which are enshrined in the 1978 Constitution.

As promising as it might look, however, the Spanish arbitration system still had, at least up until recently, some apparent room for improvement. Spain lacked a truly leading arbitral institution for international arbitration. In fairness, it is *de rigueur* to note that the three major arbitration bodies in Spain – the Madrid Court of Arbitration, the Civil and Commercial Court of Arbitration and the Spanish Court of Arbitration – have built over the past 30 years robust expertise in handling both international and domestic cases. None of them, however, can claim to have developed an international profile akin to other international arbitration centres.

One plausible reason for the limited visibility of Spanish arbitral centres beyond our boundaries lies precisely in the fact that they engaged in competition among themselves at the international level early on and that, more importantly, they did so under the same national flag but with diverging arbitration rules, organizational frameworks and appointment of arbitrators systems. The distortions resulting from that setting are generally thought to have driven away –not only from the arbitral institutions themselves but also from Spain as a seat for international arbitration– users who otherwise would have been willing to come to Spain and particularly to Madrid, to settle their cross-border disputes.

In this state of affairs, joining forces under a single centre to administer international arbitrations looked like the sensible way forward for the three largest Spanish arbitration courts. Unifying their international activities would not only eliminate a distorting multiplicity of players, but more importantly would create the right conditions for the new centre –and ultimately for international users– to capitalize on their combined experience, expertise and talent.

The circumstances just described, coupled with renovated energies in the managing bodies of the three arbitral institutions, led them to sign a Memorandum of Understanding in 2017 (2017 MOU) that paved the way towards the recently launched Madrid International Arbitration Center (MIAC or in Spanish, CIAM).

It is not hard to imagine the broad range of challenges that the soon to be partners had to deal with at the negotiation table set up further to the signing of the 2017 MOU. To name but a few: devising an appropriate legal structure for the merger, taking into account the partners' diverse legal nature (a private association and two chambers of commerce); setting out the scope of consolidation, i.e., defining what arbitration proceedings would be handled by the new centre and crafting the appropriate *renvoi* mechanism; designing an independent, transparent and efficient governance structure; and, last but not least, agreeing on the role that the partners would play in the running of the new centre and, in particular, their involvement in its decision-making processes.

These negotiations crystallized into the MIAC Project. MIAC is the result of the merger of the international activity of the three 2017 MOU signatories, which have been joined by the Madrid Bar Association, as a strategic partner. Through MIAC, the four institutions combine their experience and efforts in order to provide users with an independent, transparent and efficient international dispute resolution service.

In view of the negotiations' outcome, one can only feel grateful that the partners conducted themselves throughout their dealings with the utmost commitment, loyalty, generosity, legal proficiency, long-term vision and professionalism.

Every aspect of the MIAC project has been carefully geared towards fulfilling the foundational mission of becoming a leading international dispute resolution powerhouse and offering the best quality in the market. In particular, three specific features of the MIAC arbitration system are worth taking a closer look at this point in time: scope of application, governance and appointment of arbitrators.

Scope of Application

MIAC will only administer international cases, in accordance with article 3 of the Spanish Arbitration Act, in Spanish, English and Portuguese. Therefore, domestic arbitrations will still be handled by the associated courts.

Apart from disputes deriving from arbitration agreements designating MIAC as administering

institution, MIAC will administer international cases arising out of arbitration agreements designating any of the four promoting entities as administering institution, provided that they are signed on or after 1 January 2020. To that end, all four entities will have their Rules amended by that date to include this *renvoi* clause to MIAC.

As a result, international cases deriving from arbitration agreements designating any of the four promoting entities as administering institution signed before 1 January 2020 will be initially administered by the corresponding promoting entity. The parties, however, will be invited to consider referring the case to MIAC and, if they come to an agreement in this sense, the case will be administered by MIAC. For such purpose, the parties will receive the necessary information to assess the possibility of designating MIAC by mutual agreement.

International cases currently being administered by any of the four promoting entities will continue to be administered by that entity until they finish, with no change.

The rationale for this scope solution is twofold: first, it strengthens MIAC's exclusive focus on international cases; second, party autonomy is scrupulously respected, in the sense that MIAC will not handle cases resulting from arbitration agreements in which the common intention of the parties to submit to MIAC at the time the agreement was made might be questioned in the slightest manner.

Governance

The structure and organization of MIAC are aimed at ensuring that arbitration services are delivered in accordance with the increasingly heightened standards of independence, impartiality, transparency, efficiency and professionalism that users demand.

MIAC's governance structure consists of several governing bodies. Each of them is entrusted with clear-cut arbitral functions so that the necessary checks and balances are ensured.

MIAC's key governing body is the 13-member Plenary. All of them must be recognized, experienced and diverse arbitration practitioners from different jurisdictions across the world. They represent the international arbitration community and embody MIAC's aspiration to be an arbitral centre made up of professionals and devoted to serving professionals.

MIAC's associated entities share the vision that the staffing of the Plenary must be legitimized by the arbitration community. As a consequence, a majority of its members are appointed by the Plenary body itself through transparent cooptation procedures.

In line with the best governance practices, the Plenary body is entrusted with the core administration functions in connection with arbitral proceedings.

MIAC's initial Plenary is integrated by renowned professionals in the legal world and the arbitral community, including José María Alonso, Begoña Castro, Adolfo Díaz-Ambrona, Josef Fröhlingsdorf, Elena Otero-Novas, Urquiola de Palacio, Giulio Palermo, Pilar Perales, Dámaso Riaño, Julio César Rivera, Francisco Ruiz Risueño and Juan Serrada plus the President of MIAC.

At the time this story goes to press, MIAC's Plenary keeps working at full steam in order to have the Arbitration Rules passed at its next meeting at the end of November 2019, so that operations can start without further ado in January 2020.

Appointment of Arbitrators

MIAC will not have a list of arbitrators.

MIAC's arbitrators will be appointed by the Arbitrators Appointment Committee. This board includes the President plus four members who will not be part of the Plenary or any other body of the arbitration center. The members of the Arbitrators Appointment Committee are appointed by the Plenary. They must be expert, recognized and diverse arbitration practitioners.

The appointment of arbitrators will be transparent and will be conducted in accordance with the rules set by the Plenary. These rules will be accessible to the general public.

The appointment of arbitrators will be absolutely respectful with party autonomy. Only when parties fail to nominate arbitrators by mutual consent, they will be appointed by MIAC. Even when the arbitrators are appointed by MIAC, the parties will play a relevant role in their appointment by crossing out and ranking arbitrators in accordance with their preferences.

As MIAC's first President, I am both honored and excited to have the opportunity to participate in this project and to effectively serve the arbitration global community from this office, as this is MIAC's ultimate purpose.