



The Arbitration Review of the Americas

2025

**JAMS: Fresh ADR perspective for new
challenges**

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The Arbitration Review of the Americas 2025 contains insight and thought leadership from pre-eminent practitioners from the region. It provides an invaluable retrospective on what has been happening in some of Latin America's more interesting seats. This edition also contains an interesting think piece on concurrent delay as well as an excellent pair of reviews of decisions in the US and Canadian courts.

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JAMS: Fresh ADR perspective for new challenges

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IN SUMMARY

This article provides a summary of JAMS as a brand and of various aspects of its operation. In addition, we summarise the JAMS International Arbitration Rules and expand on some of the initiatives that JAMS has instituted to support its international practice.

DISCUSSION POINTS

- Overview of JAMS
 - International arbitral procedure before JAMS
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 - Technology in JAMS processes
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REFERENCED IN THIS ARTICLE

- JAMS International Arbitration Rules
 - Equal Representation in Arbitration Pledge
 - California Senate Bill 766
 - UNCITRAL Model Law and New York Convention
 - ICCA-NYC Bar-CPR Cybersecurity Protocol
 - New York International Arbitration Center
 - Seoul Protocol on Video Conferencing in International Arbitration
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INTRODUCTION

JAMS provides a comprehensive spectrum of conflict prevention and dispute resolution services to meet the unique needs of today's global business environment. These include mediation, arbitration and a suite of conflict prevention interventions and resolution options.

Founded in southern California in 1979, JAMS remains headquartered in Irvine, California, and now has 29 offices in North America and London, with state-of-the-art facilities in key markets designed to support an efficient dispute resolution process. The panel includes more than 450 former practising attorneys, alternative dispute resolution (ADR) professionals and retired judges with proven track records and extensive practice area and industry knowledge. JAMS neutrals and clients are supported by approximately 300 associates, including ADR systems design experts and case managers with decades of experience.

With over four decades of experience, JAMS handles nearly 20,000 cases annually, ranging from two-party personal injury mediations to complex, multiparty, multimillion-dollar arbitrations worldwide. That depth of experience – combined with the respect of courts, attorneys, government agencies and claims administrators – makes JAMS uniquely qualified to coordinate the entire resolution process. In addition, JAMS has resolved thousands of virtual cases, and its neutrals are proficient on a wide range of online platforms.

JAMS neutrals are available to conduct sessions in person, as well as virtually, for clients across the country and internationally.

JAMS offers a full range of efficient, cost-effective ADR processes. Primarily in connection with US domestic arbitration or litigation, JAMS panellists serve as general, special or discovery referees, or as temporary judges. JAMS referees devise and manage discovery plans and supervise ongoing issues, including monitoring depositions and resolving discovery disputes. As temporary judges appointed under all-purpose references, JAMS neutrals handle all aspects of a case, from pretrial rulings to full bench trials. Under consensual references, they act as liaisons between the parties and the court.

JAMS panellists also are available to provide neutral analysis, which offers attorneys the ability to retain a neutral to deliver an evaluation, either in person or via written report, based on the merits of their case. The JAMS Neutral Analysis tool can be tailored to fit the unique needs of a case, and typically involves review of factual and legal positions either through briefs, oral arguments, mock exercises or, in domestic cases, an evaluation of what a likely jury outcome might be.

JAMS provides a diverse selection of arbitration rules and procedures designed to meet parties' needs, including Artificial Intelligence Disputes Clause and Rules, International Arbitration Rules, Comprehensive Arbitration Rules, Streamlined Rules, Engineering and Construction Rules, Optional Expedited Arbitration Procedures, Employment Arbitration Rules, Class Action Procedures, Mass Arbitration Procedures and Guidelines and Optional Arbitration Appeal Procedure. JAMS clause workbooks are available to guide the drafting of dispute resolution clauses for commercial contracts, ensuring effective conflict resolution provisions.

In its latest case statistics report, JAMS reported a total of 19,464 new cases in 2023, compared with 18,200 in 2022, including 241 new international cases, composed of 56 per cent arbitrations, 42 per cent mediations and 2 per cent other ADR processes. Of those new international arbitrations, 83 per cent were conducted under JAMS Arbitration Rules and Procedures, with the remainder conducted under other arbitration rules.

This article provides a summary of the JAMS International Arbitration Rules and expands on some of the initiatives that JAMS has instituted to support its international practice.

INTERNATIONAL ARBITRAL PROCEDURE BEFORE JAMS

Model International Clause

The JAMS standard arbitration clause for international commercial contracts is as follows:

Any dispute, controversy or claim arising out of or relating to this contract, including the formation, interpretation, breach or termination thereof, including whether the claims asserted are arbitrable, will be referred to and finally determined by arbitration in accordance with the JAMS International Arbitration Rules. The tribunal will consist of [three arbitrators][a sole arbitrator]. The seat of the arbitration will be [location]. The language to be used in the arbitral proceedings will be [language]. Judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.

The current JAMS International Arbitration Rules were revised and became effective on 1 June 2021. The revised Rules (article 2.2) recognised the development of electronic

systems for case management and other processes and streamlined the filing of requests for arbitration and other pleadings and submissions.

COMMENTARY ON CERTAIN FEATURES OF THE JAMS INTERNATIONAL ARBITRATION RULES

Provisions On Confidentiality Of Arbitration

The revised JAMS International Arbitration Rules address the confidentiality of arbitration, expressly providing that the parties, as well as the tribunal and the administrator, 'will maintain the confidentiality of the arbitration' (article 16.1). Article 16.2 also provides that the arbitration award, unless otherwise required by law, 'will remain confidential, unless all the parties consent to its publication'.

Availability Of Expedited Procedures

Article 21 of the JAMS International Arbitration Rules provides an optional expedited arbitration procedure for cases involving less than US\$5 million in which parties can choose a process that limits any disclosure that might be permitted. Any party may include a request for the procedure in its arbitration agreement (article 21.1).

If the request is opposed, JAMS will determine whether the arbitration will be conducted on an expedited basis. Arbitrations conducted under the expedited procedures should take six months to complete.

Emergency Relief

Article 3 of the JAMS International Arbitration Rules provides for emergency relief procedures. A party in need of emergency relief prior to the appointment of a tribunal may notify JAMS and the parties in writing of the relief sought and the basis for an award of this relief. JAMS will appoint an emergency arbitrator to rule on the emergency request. In most cases, that appointment will occur within 24 hours of receipt of the emergency application and any requested advance.

Within two business days, or as soon as practicable thereafter, the emergency arbitrator will establish a schedule to consider the request for emergency relief, affording all parties an opportunity to be heard (by remote means if necessary). The emergency arbitrator will determine whether the party seeking emergency relief has shown that immediate loss or damage will result in the absence of emergency relief and whether the requesting party is entitled to the relief. The emergency arbitrator will then issue a reasoned order or award granting or denying the relief. Any order or award of an emergency arbitrator can be revisited and revised, if deemed appropriate, by the tribunal once appointed.

Interim Measures Of Protection

Article 31 of the JAMS International Arbitration Rules is new. The old Rules authorised a tribunal to grant interim relief, but the revised Rules changed the showing required to obtain this relief. Article 31.2 now aligns with the UNCITRAL standard. It provides that interim relief may be ordered if the requesting party demonstrates, first, that:

harm not adequately reparable by an Award of damages is likely to result if the measure is not ordered and such harm substantially outweighs the harm that is likely to result to the Party against whom the measure is directed if the measure is granted'

and, second, that:

‘there is a reasonable possibility that the requesting Party will succeed on the merits of the claim.

This is a major change. The prerequisites for interim measures now do not require a showing of either irreparable harm or likelihood of success on the merits.

The tribunal also has the power to require security for any costs that might be incurred if it is subsequently determined that the moving party was not entitled to the interim relief.

Consolidation Of Disputes Between The Same Parties And Joinder Of Third Parties

Article 6 of the JAMS International Arbitration Rules provides for consolidation of disputes and joinder of third parties. Article 6.1 invests JAMS (through its JAMS International Arbitration Committee) with the discretion to decide, ‘after consulting with the parties to all proceedings and with the arbitrators, that the new case will be referred to the Tribunal already constituted for the existing proceedings’. The article requires JAMS to ‘take into account all circumstances, including the links between the two cases and the progress already made in the existing proceedings’.

Additionally, article 6.2 provides for disputes arising out of or in connection with multiple contracts to be consolidated into a single arbitration. Article 6.3 is invoked if a third party ‘seeks to participate in an arbitration already pending’, in which case the tribunal (not JAMS) must ‘decide on such request, after consulting with all the parties, taking into account all circumstances it deems relevant and applicable’.

Time Limits For Rendering Of The Award

Article 33.1 of the JAMS International Arbitration Rules provides that ‘in most circumstances, the dispute should be heard and submitted to the Tribunal for decision within nine months after the initial preliminary conference’. Further, in promoting speed and efficiency, the final award should be rendered within three months of the dispute being heard by the tribunal and submitted for decision. JAMS will scrutinise all awards before issuance.

Treatment Of Costs Of The Arbitration

Article 36 of the JAMS International Arbitration Rules defines arbitration ‘costs’ as comprising, among other things, the tribunal’s fees as well as the ‘reasonable costs for legal representation of a successful party’. The tribunal’s fees are calculated ‘by reference to work done by its members in connection with the arbitration’ and ‘will be charged at rates appropriate to the particular circumstances of the cases including its complexity and the special qualifications of the arbitrators’ (article 36.2).

Under article 36.4, the tribunal is required to ‘fix the arbitration costs in its award’. Importantly, under that same article, the tribunal ‘may apportion such costs among the parties’ if the tribunal ‘determines that such apportionment is reasonable, taking into account the circumstances of the case’.

Appellate Procedures

The JAMS Optional Arbitration Appeal Procedure applies only upon express party agreement. Selection of the appellate arbitrators is left to the parties, but if they fail to reach agreement, the assigned case manager is authorised to make the appointments.

The usual deferential appellate standard applied under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) is not applicable. Instead, the appellate panel is mandated to apply 'the same standard of review that the first-level appellate court in the jurisdiction would apply to an appeal from the trial court decision'.

Remote Hearings

Remote hearings are now authorised even over the objection of a party. Hearings may take place at any location, and the tribunal, at its discretion, may require that hearings be conducted by means that permit the participants to be located in different geographical locations.

Arbitrators

JAMS panellists include some of the most distinguished retired judges and attorneys in the United States and Europe. In addition, most JAMS panellists are full-time mediators and arbitrators, which allows for the avoidance of conflicts and ease of scheduling cases. Information about JAMS arbitrators and mediators, including detailed CVs, can be found at www.jamsadr.com.

The appointment of arbitrators is governed by article 7, which, similarly to the International Chamber of Commerce (ICC), calls for party appointments. Appointed arbitrators need not be affiliated with JAMS. (Consistent with international standards, all arbitrators are required to be impartial and independent.)

If the parties have not agreed on the number of arbitrators, one arbitrator will be appointed, unless JAMS determines at its discretion that having three arbitrators is appropriate because of the size, complexity or other circumstances of the case.

If the parties have agreed on a procedure for appointing the arbitrators, that procedure will be followed. If the parties have not agreed, then JAMS will follow a list procedure.

Costs, Fees And Other Service Charges

JAMS arbitrators set their own hourly or daily rate. Fees range from approximately US\$400 to US\$2,000 per hour, depending on the arbitrator selected.

For matters administered under the JAMS International Arbitration Rules, JAMS charges a US\$2,000 filing fee payable by the initiating party and 13 per cent of professional fees thereafter for administrative services.

JAMS does not charge fees on an ad valorem basis; instead, fees are billed as the case progresses and are, therefore, directly proportional to the amount of professional time devoted to the matter. Professional fees include time spent for hearings, pre- and post-hearing reading and research, and award preparation. Administrative fees include those for:

- dedicated services, including billing and all other administrative services throughout the duration of the case;

- document handling;
- on-site business support available at any JAMS office, including local phone service, internet access, and fax and copying capabilities; and
- on-demand technical support from the JAMS virtual front desk, including a JAMS Virtual Moderator to assist throughout the process.

Administrative fees (not including conference room rentals) will not exceed US\$100,000. JAMS reserves the right to adjust this cap for extraordinary cases, after consultation with the parties.

For hearings scheduled for two days or more that are cancelled or continued 60 days prior to the commencement date, arbitrator fees for the reserved hearing time are non-refundable; however, the cancellation–continuance policy is set by the individual arbitrators and, therefore, may vary. This is because time reserved and later cancelled generally cannot be replaced.

In all cases involving non-refundable time, the party causing the continuance or cancellation is responsible for the cancellation charges.

JAMS will invoice for the fees of all arbitrators, regardless of whether the arbitrator is affiliated with JAMS. Receipt of payment for all fees is required prior to the delivery of an arbitration award. JAMS reserves the right to cancel a hearing if fees are not paid by all parties by the applicable cancellation date.

JAMS INTERNATIONAL ARBITRATION CENTRES

As a result of the appointment of many of its neutrals under the JAMS International Arbitration Rules and the rules of other institutions (eg, ICC, International Centre for Dispute Resolution, Singapore International Arbitration Centre, London Court of International Arbitration and Hong Kong International Arbitration Centre), JAMS has been conducting international arbitrations at its major metropolitan city offices for many years.

To support the growing demand for international arbitration, JAMS has specially designed international arbitration centres in New York, Miami, San Francisco, Century City and Los Angeles. These world-class hearing facilities provide modern, spacious conference rooms, state-of-the-art technology and case administrative services.

Each facility has been equipped with features that benefit the international arbitration process and may include:

- the ability to conduct hearings in person, hybrid or virtually (with the assistance of moderators and a technology help desk);
- spacious, secure hearing rooms with modular tables for flexible hearing set-ups, plus access to as many breakout rooms as required;
- large LCD monitors and high-quality videoconferencing for remote participants and witness cross-examination;
- complimentary high-speed wireless and cable internet;
- arbitrator lounges for tripartite proceedings; and
- translation booths and translation capabilities.

In 2022, JAMS announced a collaboration with the New York International Arbitration Center, Inc (NYIAC) as an initiative to promote and support international arbitration in New York. This joint effort, dubbed NYIAC@JAMS, allows the NYIAC to bring international arbitrations to JAMS's New York Resolution Center, which comprises two floors in The New York Times Building, and open the door for increased collaboration on thought leadership between the two organisations. The collaboration also includes the ongoing development and promotion of events for the international arbitration community that will be hosted at JAMS, in parallel with expanding access through virtual platforms.

TECHNOLOGY

JAMS's resolution centres are designed to meet the technical demands of modern practice.

JAMS's hearing rooms have conferencing facilities over a password-protected network using Zoom or one of the other favoured videoconferencing platforms. An IT specialist is available to assist with technical requirements.

Each international arbitration centre has at least one large hearing room. The translation booths in each of the hearing facilities comply with ISO 2603/2016^[1] and have all the technical necessities to conduct a bilingual hearing.

Cybersecurity and data protection are ongoing concerns. JAMS follows a series of protocols to ensure the safe handling of data.^[2] Several initiatives have been introduced, including the ICCA–NYC Bar–CPR Cybersecurity Protocol^[3] and the Seoul Protocol on Video Conferencing^[4].

In 2020, JAMS announced the launch of JAMS Access, a secure online case management platform where neutrals, attorneys and case managers can easily access case information. JAMS Access is provided to JAMS clients at no charge, streamlines the filing and service of documents and facilitates easy communication between parties within ADR cases. The cloud-based solution, which has multiple security layers and uses encryption, is available to users 24 hours a day, seven days a week, and can be accessed on multiple devices, including tablets and smartphones.

JAMS also provides training and education through the JAMS Institute to arbitration practitioners and users on effective data protection measures. The challenge is to ensure that all participants in international arbitration follow those protocols, which is why education and guidance are essential in maintaining protection.

In 2024, JAMS created new rules governing disputes involving artificial intelligence (AI). The rules reflect the latest developments and trends in the ADR space and address the rise in usage and development of AI systems and smart contracts. The JAMS AI Disputes Clause and Rules refine and clarify procedures for cases involving AI systems. This includes proper filing, service of the request for arbitration, commencement of the arbitration and service of documents throughout the arbitration. The rules expand the scope of the rules outlined for domestic arbitrations that involve new technology.

Types Of Disputes Handled

JAMS handles multiparty, complex cases in virtually all areas of law: accounting and finance; administrative law; agribusiness and food; American Indian tribal; antitrust and competition; appellate; AI; aviation; banking; bankruptcy; business and commercial; cannabis; civil rights; class action and mass tort; construction; construction defect; cybersecurity and privacy;

mass and natural disaster relief; education; employment; energy and utilities; engineering (mechanical); engineering and construction; entertainment and sports; environmental; estate, probate and trusts; family; federal; financial markets; franchise and distribution; governmental and public agency; healthcare; health systems; higher education and Title IX; insurance; intellectual property; international and cross-border; life sciences; maritime and admiralty; personal injury and torts; pharmaceutical; product liability; professional liability; real estate and real property; securities; smart contracts and blockchain; surety; and telecommunications.

DIVERSITY, EQUITY AND INCLUSION: THE JAMS APPROACH

Diversity, equity and inclusion (DE&I) is a core value at JAMS, which has led the ADR industry by example. While there is room for improvement, 45 per cent of senior management are women, 72 per cent of employees are women and 50 per cent of employees are diverse.^[5] In addition, 35 per cent of the JAMS panel in 2024 are women, which compares favourably with other leading arbitral institutions.

JAMS was the first ADR provider to have a full-time DE&I professional tasked with increasing representation among historically disadvantaged groups across the spectrum for mediators and arbitrators. JAMS was also the first to include a diversity and inclusion clause into its sample arbitration agreements, making it easier for clients to choose diverse neutrals to arbitrate their disputes:

The parties agree that, wherever practicable, they will seek to appoint a fair representation of diverse arbitrators (considering gender, ethnicity and sexual orientation), and will request administering institutions to include a fair representation of diverse candidates on their rosters and list of potential arbitrator appointees.

In 2021, JAMS created the JAMS Diversity Fellowship Program to provide training, mentorship, sponsorship, shadowing and networking opportunities to up-and-coming diverse ADR professionals. The most recent class consisted of seven fellows across four markets: New York, Chicago, St Louis and Los Angeles.

In 2023, JAMS pledged its commitment to the Ray Corollary Initiative (RCI), which encourages ADR providers to include at least 30 per cent diverse neutral candidates and drive accountability by tracking selections from those slates or rosters. The RCI Pledge reinforced JAMS' long-standing work to promote diversity in ADR, including in its strike list enhancement, which includes a goal to place four diverse neutral candidates on arbitration strike lists that consist of seven or more neutrals.

JAMS' COMMITMENT TO THE COMMUNITY AND ADR DEVELOPMENT

JAMS Foundation

The non-profit JAMS Foundation was established in 2002. Its mission is to provide financial assistance for conflict resolution initiatives with national and international impact and to share its dispute resolution experience for the benefit of the public interest.

The Foundation is funded entirely by contributions from JAMS neutrals, senior managers and employee associates, as well as a substantial annual donation from JAMS. To uphold the company's core value of neutrality, the Foundation accepts no donations outside JAMS.

The Foundation currently comprises over 300 principal benefactors and other contributors, and has provided more than US\$12 million in grant funding since its inception.

Warren Knight Distinguished Service Award

The JAMS Foundation also established the annual Warren Knight Distinguished Service Award, named in honour of JAMS' founder and including a US\$25,000 grant, to recognise organisations doing exceptional work in the field of conflict prevention and dispute resolution. The 16th annual Warren Knight Distinguished Service Award was presented in April 2024 to Common Justice for its efforts to develop and advance solutions to violence that transform the lives of those harmed and to foster racial equity without relying on incarceration.

Weinstein JAMS International Fellowship

The Weinstein JAMS International Fellowship Program is named to honour the contributions of JAMS neutral the Honourable Daniel Weinstein (Ret). Founded in 2008 and supported by the JAMS Foundation in partnership with Judge Weinstein, the programme is designed to provide opportunities for qualified individuals outside the United States to study ADR processes and practices in the United States and to assist them in their ability to advance dispute resolution in their home countries. Since its inception, the Weinstein JAMS International Fellowship Program has supported over 150 fellows from more than 85 countries.

JAMS Society

The JAMS Society was created in 2002 to recognise and support volunteer opportunities and community involvement for JAMS associates at a local, hands-on level. All associates are encouraged to become members of their local society and to collaborate on outreach programmes or to work individually on a project of their choice.

JAMS Society members participate in a diverse array of volunteer activities around the country, ranging from cleaning up the environment to improving the lives of children and seniors. The members have elected to make positive changes in their communities by participating in projects such as adopt-a-family programmes, AIDS walks, blood drives, clothing drives and meal deliveries to homebound seniors.

JAMS Pathways

In 2022, JAMS launched JAMS Pathways, an innovative resource for organisations to help mitigate and navigate conflict supported by proven methods of dispute resolution. JAMS Pathways starts with a deep dive into the issues and goals associated with each matter. Based on JAMS' findings, Pathways professionals design, provide and oversee a system of targeted training, neutral facilitation and early dispute resolution services for the organisation that aligns with its needs and helps identify and resolve conflicts early, quickly and effectively.

Endnotes

[1] <https://www.iso.org/standard/67065.html>.

[2] For more information, see www.jamsadr.com/online.

[3] The ICCA–NYC Bar–CPR Protocol on Cybersecurity in International Arbitration can be found at www.arbitration-icca.org/publications/ICCA_Report_N6.html.

[4] Details of the Seoul Protocol can be found at www.kcabinternational.or.kr/user/Board/comm_notice.do?BD_NO=172&CURRENT_MENU_CODE=MENU0015&TOP_MENU_CODE=MENU0014. Additional commentary on the Seoul Protocol and post-covid practice is available at www.jamsadr.com/blog/2020/the-seoul-protocol-on-videoconferencing-and-the-coronavirus-pandemic.

[5] www.jamsadr.com/diversity.



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