

SECTION II

**ARBITRATION OF DISPUTES
OF LIMITED FINANCIAL IMPORTANCE**

PRELIMINARY PROVISIONS

Article 1. - Belgian Centre for Mediation and Arbitration

The Belgian Centre for Arbitration and Mediation (« CEPANI ») is an independent body which administers arbitration proceedings in accordance with its Rules. It does not itself resolve disputes and it does not act as an arbitrator.

Article 2. - Definitions

In the following provisions:

- (i) « Secretariat » means the CEPANI secretariat.
- (ii) « President » means the President of CEPANI.
- (iii) « Appointments Committee » means the CEPANI Appointments Committee.
- (iv) « Challenge Committee » means the CEPANI Challenge Committee.
- (v) « arbitration agreement » means any form of mutual agreement to have recourse to arbitration.
- (vi) « Arbitral Tribunal » means the sole Arbitrator.
- (vii) « Claimant » and « Respondent » shall be deemed to refer to one or more claimants or respondents.
- (viii) « Award » means, *inter alia*, any interim, partial or final arbitration award.
- (ix) « Order » means the decisions of the Arbitral Tribunal relating to the conduct of the arbitration proceedings.
- (x) « days » means calendar days.
- (xi) « Rules » means the CEPANI Arbitration Rules for disputes of limited financial importance.

Article 3. - Scope

1. The CEPANI Arbitration Rules for disputes of limited financial importance shall apply if the principal claim and the counterclaim, if any, together do not exceed the amount of € 25.000,00.
2. In the event that the principal claim and the counterclaim together exceed € 25.000,00 in the course of the proceedings, the CEPANI Arbitration Rules for disputes of limited financial importance of the Rules shall still apply, unless otherwise agreed by the parties, in which case the proceedings shall be governed by the Arbitration Rules set out in Section I of these Rules.

COMMENCEMENT OF THE PROCEEDINGS

Article 4. - Request for Arbitration of disputes of limited financial importance

1. A party wishing to have recourse to arbitration of disputes of limited financial importance under the CEPANI rules shall submit its Request for Arbitration to the secretariat.

The Request for Arbitration shall include, *inter alia*, the following information:

- a) name, first name and the name in full, description, address, telephone and fax numbers, e-mail addresses and VAT-number, if any, of each of the parties;
- b) name, first name, corporate name, function, address, telephone and fax numbers, e-mail address of the person or persons representing the Claimant in the arbitration;
- c) a succinct recital of the nature and circumstances of the dispute giving rise to the claim;
- d) a statement of the relief sought, a summary of the grounds for the claim, and, if possible, a financial estimate of the amount of the claim;

- e) any comments as to the place of the arbitration, the language of the arbitration and the applicable rules of law.

Together with the Request, Claimant shall provide copies of all agreements, in particular the arbitration agreement, the correspondence between the parties and other relevant documents.

The Request for Arbitration and the documents annexed thereto shall be supplied in two copies, one for the arbitrator to be appointed and the other for the secretariat.

2. Claimant shall also attach to the Request for Arbitration proof of the dispatch to Respondent of the Request and the documents annexed thereto.
3. The date on which the secretariat receives the Request for Arbitration of disputes of limited financial importance and the annexes thereto and the payment of the registration costs such as determined under point 2 of the Schedule I, shall be deemed to be the date of commencement of the arbitral proceedings. The secretariat shall confirm this date to the parties.

Article 5. - Answer to the Request for Arbitration and filing of a counterclaim

1. Within twenty-one days from the date of the commencement of the arbitral proceedings, Respondent shall send its Answer to the Request for Arbitration to the secretariat.

The Answer shall include, *inter alia*, the following information:

- a) name, first name and the name in full, description, address, telephone and fax numbers, e-mail address and VAT-number, if any, of Respondent;
- b) name, first name, corporate name, address, telephone and fax numbers, e-mail address of the person or persons representing the Respondent in the arbitration;
- c) the Respondent's succinct comments as to the nature and circumstances of the dispute that gives rise to the claim;

- d) its response to the relief sought;
- e) any comments as to the place of the arbitration, the language of the arbitration and the applicable rules of law.

The Answer and the documents annexed thereto shall be supplied in two copies, one for the arbitrator to be appointed and the other for the secretariat.

2. Respondent shall also attach to the Answer proof of the dispatch, within the same time limit of twenty-one days, to Claimant of the Answer and the documents annexed thereto.
3. Any counterclaim made by Respondent shall be filed with its Answer and shall include:
 - a) a succinct recital of the nature and circumstances of the dispute that gives rise to the counterclaim.
 - b) an indication of the object of the counterclaim and, if possible, a financial estimate of the amount of the counterclaim.
4. All useful documents will be enclosed with the counterclaim.
5. The time limit mentioned in paragraph 1 may be extended pursuant to a reasoned request of Respondent, or on its own motion, by the secretariat.

Article 6. - Exchange of memoranda

1. Within twenty-one days from the date on which Respondent submits its Answer and the annexes thereto to the secretariat, Claimant shall submit a Reply to the secretariat and transmit said Reply at the same time to Respondent.
2. Within twenty-one days from the date on which Claimant has submitted its Reply and the annexes thereto to the secretariat, Respondent shall submit a Second Reply to the secretariat and transmit said Second Reply at the same time to Claimant.
3. Subsequently, Claimant shall have a period of fourteen days from

the date on which Respondent has submitted its Second Reply to the secretariat during which it may itself submit a Second Reply to the secretariat and transmit said Second Reply at the same time to Respondent.

4. Finally, Respondent shall have a period of fourteen days from the date on which Claimant has submitted its Second Reply to the secretariat during which it may submit a Last Reply to the secretariat and transmit said Last Reply at the same time to Claimant.
5. These time limits may be extended pursuant to a reasoned request of the parties or one of them. Any demand for extension shall be directed to the Arbitral Tribunal, if constituted, or to the secretariat. If necessary, the secretariat may extend these time limits upon its own motion.

Article 7. - *Prima facie* lack of an Arbitration Agreement

In the event that, *prima facie*, there is no arbitration agreement, the arbitration may not proceed should Respondent not answer within the one-month period mentioned in Article 5, or should Respondent refuse arbitration under the CEPANI Rules.

Article 8. - Effect of the arbitration agreement

1. When the parties agree to resort to CEPANI for arbitration, they thereby submit to the Rules, including the Schedules, which are in effect on the date of the commencement of the arbitral proceedings, unless they have agreed to submit to the Rules in effect on the date of their arbitration agreement.
2. If, notwithstanding the presence of a *prima facie* arbitration agreement, one of the parties refuses to submit to arbitration, or fails to take part in the arbitration, the arbitration shall nevertheless proceed.
3. If, notwithstanding the presence of a *prima facie* arbitration agreement, a party raises one or more pleas concerning the existence, validity or scope of the arbitration agreement, the arbitration shall proceed without CEPANI deciding on the admissibility or merits of the pleas. In such case the Arbitral Tribunal shall itself rule on its jurisdiction.

4. Unless otherwise agreed, the Arbitral Tribunal shall not cease to have jurisdiction by reason of the nullity or the non-existence of the contract, provided that the Arbitral Tribunal upholds the validity of the arbitration agreement.

Article 9. - Written Notifications or Communications and Time Limits

1. The memorials and written submissions and other written communications presented by the parties, as well as all annexed documentary evidence and documents, shall be sent by each of the parties simultaneously to all the other parties and to the arbitrator. The secretariat shall receive a copy of all the said communications and documents as well as of the communications of the Arbitral Tribunal to the parties.
2. The Request for Arbitration, the Answer to the Request for Arbitration, the memorials and written submissions and the nomination of the arbitrator shall be validly notified if remitted by courier service against receipt, sent by registered letter, letter, fax or in electronic form which allows for proof of the sending. Without prejudice to article 24.2, all other notifications and communications made pursuant to these Rules shall be validly effected by any other means of written communication.
3. The Arbitral Tribunal may decide that other notification and communication rules shall apply.
4. If a party is represented by counsel, all notifications or communications shall be made to the latter, unless the said party requests otherwise.

All notifications or communications shall be valid if dispatched to the last address of the party to whom they are addressed, as notified either by the party in question or, as the case may be, by the other party.

5. A notification or communication, made in accordance with paragraph 2, shall be deemed to have been made when it is received, or should have been received, by the party itself or by its counsel.
6. Periods of time specified in these Rules, shall start to run on the day following the date a notification or communication is deemed to

have been made in accordance with paragraph 5. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication has to be made the period of time shall expire at the end of the first following business day. A notice or communication shall be treated as having been timely notified if it is dispatched in accordance with paragraph 2 prior to, or on the date of, the expiry of the time limit.

THE ARBITRAL TRIBUNAL

Article 10. - General provisions

1. Only those persons who are independent of the parties and of their counsel and who comply with the Rules of Good Conduct set out in Schedule III, may serve as arbitrators in arbitration proceedings organized by CEPANI.

Once he has been appointed or confirmed the arbitrator undertakes to remain independent until the end of his appointment. He is impartial and undertakes to remain so and to be available.

2. The Appointments Committee or the President shall appoint or confirm the nomination of the Arbitral Tribunal. The parties may nominate the Arbitral Tribunal by mutual consent, subject to the confirmation of the Appointments Committee or the President.
3. Prior to his appointment or confirmation the arbitrator whose appointment is being proposed shall sign a statement of acceptance, independence and availability. He shall disclose in writing to the secretariat any facts or circumstances which might be of such a nature so as to call into question the arbitrator's independence in the eyes of the parties. The secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them.
4. An arbitrator shall immediately disclose in writing to the secretariat and to the parties any facts or circumstances of a similar nature as those mentioned in paragraph 3 which may arise during the arbitration.

5. The decisions of the Appointments Committee or the President as to the appointment, confirmation or replacement of an arbitrator shall be final. The reasons for the decision shall not be communicated.
6. By accepting to serve, every arbitrator undertakes to carry out his responsibilities until the end in accordance with these Rules.

Article 11. - Appointment of the Arbitral Tribunal

The Appointments Committee or the President appoints or confirms the nomination of the Arbitral Tribunal within a period of eight days from the payment by the parties, or by one of them, of the advance on arbitration costs in accordance with the provisions of Article 28. It will thereby take into account more particularly the availability, the qualifications and the ability of the Arbitrator to conduct the arbitration in accordance with these Rules.

Article 12. - Challenge of the arbitrator

1. A challenge for reasons of any alleged lack of independence or for any other reason, shall be communicated to the secretariat in writing and shall contain the facts and circumstances on which it is based
2. In order to be admissible the challenge must be communicated by a party, either within one month of the receipt by that party of the notification of the arbitrator's appointment, or within one month of the date on which that party was informed of the facts and circumstances which it invokes in support of its challenge, whichever date is the later.
3. The secretariat shall invite the arbitrator concerned and the other parties to present their written observations within a time period fixed by the secretariat. These observations shall be communicated to the parties and to the arbitrator. The parties and arbitrators may respond to these observations within the time period fixed by the secretariat.

The latter then transmits the challenge and the comments received to the Challenge Committee. The Committee decides on the admissibility and on the merits of the challenge.

4. The Challenge Committee shall decide without any recourse on the challenge of an arbitrator. The reasons for the decision shall not be communicated.

Article 13. - Replacement of the arbitrator

1. In the event of an arbitrator's death, challenge, accepted withdrawal, resignation, or if there is a cause preventing him from fulfilling his duties, or upon request of all parties, the arbitrator shall be replaced.
2. An arbitrator shall also be replaced when the Appointments Committee or the President finds that the arbitrator is prevented *de jure* or *de facto* from fulfilling his duties in accordance with these Rules or within the allotted time limits. In such event, the Appointments Committee or the President shall decide on the matter after having invited the arbitrator and the parties to comment in writing to the secretariat within the time limit allotted by it. Such comments shall be communicated to the parties and to the arbitrator.
3. When an arbitrator has to be replaced, the Appointments Committee or the President shall have discretion to decide whether or not to follow the original appointment process. Once reconstituted, and after having invited the parties to comment, the Arbitral Tribunal shall determine if, and to what extent, prior proceedings shall be repeated.

THE ARBITRAL PROCEEDINGS

Article 14. - Transmission of the file to the Arbitral Tribunal

Provided that the advance on arbitration costs set out in Article 28 has been fully paid, the secretariat shall transmit the file to the Arbitral Tribunal as soon as the latter has been constituted.

Article 15. - Proof of Authority

At any time after the introduction of the arbitration, the Arbitral Tribunal or the secretariat may require proof of authority to act from

any representative of any party.

Article 16. - Language of the arbitration

1. The language or languages of the arbitration shall be determined by mutual agreement between the parties. Failing such an agreement, the language or languages of the arbitration shall be determined by the Arbitral Tribunal, due regard being given to the circumstances of the case and, in particular, to the language of the contract.
2. The Arbitral Tribunal shall have full authority to decide which of the parties shall bear the translation costs, if any, and to what extent.

Article 17. - Place of the arbitration

1. The Appointments Committee or the President shall determine the place of the arbitration, unless the parties have agreed otherwise.
2. Unless otherwise agreed by the parties and after having consulted with them, the Arbitral Tribunal may decide to hold its hearings and meetings at any other location that it considers appropriate.
3. The Arbitral Tribunal may deliberate at any place that it considers appropriate.

Article 18. - Examination of the case

1. In the conduct of the proceedings the Arbitral Tribunal and the parties shall act in a timely manner and in good faith. In particular, the parties shall abstain from any dilatory acts as well as from any other action having the object or effect of delaying the proceedings.
2. The Arbitral Tribunal shall proceed within as short a time as possible to examine the case by all appropriate means. Unless it has been agreed otherwise by the parties, the Arbitral Tribunal shall be free to decide on the rules as to the taking of evidence.

It may, *inter alia*, obtain evidence from witnesses and appoint one or more experts.

3. The Arbitral Tribunal may decide the case solely on the basis of the documents submitted by the parties, unless the parties or one of them requests a hearing.
4. Either at the request of a party or upon its own motion, the Arbitral Tribunal, subject to the giving of reasonable notice, may summon the parties to appear before it on the day and at the place that it specifies.
5. If any of the parties, although duly summoned, fails to appear, the Arbitral Tribunal shall nevertheless be empowered to proceed, provided it has ascertained that the summons was duly received by the party and that there is no valid excuse for its absence.

In any event, the Award shall be deemed to be contradictory.

6. The hearings shall not be public. Save with the approval of the Arbitral Tribunal and the parties, persons not involved in the proceedings shall not be admitted.
7. The parties shall appear in person or through duly authorized representatives or counsel.
8. New claims or counterclaims must be presented in writing. The Arbitral Tribunal may refuse to examine such new claims if it considers that they might delay the examination or the ruling on the original claim. It shall consider any other relevant circumstances.

Article 19. - Confidentiality of the Arbitration Proceedings

Unless it has been agreed otherwise by the parties or there is a legal obligation to disclose the arbitration proceedings shall be confidential.

Article 20. - Interim and conservatory measures

1. Provided that the advance to cover arbitration costs in accordance with Article 28 has been paid, each party may ask the Arbitral Tribunal, as soon as it has been appointed, to order interim and conservatory measures, including the provision of guarantees or security for costs. Any such measure shall take the form of an Order,

setting out the reasons for the decision, or, if the Arbitral Tribunal considers it appropriate, an Award

2. All interim and conservatory measures ordered by the ordinary courts in relation to the dispute must be communicated immediately to the Arbitral Tribunal and to the secretariat.

THE ARBITRAL AWARD

Article 21. - Time limit for the Arbitral Award

1. The Arbitral Tribunal shall render the Award within twenty-one days of the date on which the Last Reply was submitted to the secretariat or, if the proceedings are not based solely on documents, of the date of the last hearing.
2. This time limit may be extended pursuant to a reasoned request from the Arbitral Tribunal, or upon its own motion, by the secretariat.

Article 22. - Making of the Award

1. The Award shall state the reasons upon which it is based.
2. The Award shall be deemed to be made at the place of the arbitration and on the date stated therein.

Article 23. - Award by consent

Should the parties reach a settlement after the appointment of the Arbitral Tribunal, the settlement shall be recorded in the form of an Award made by consent of the parties if so requested by the parties and if the Arbitral Tribunal agrees to do so.

Article 24. - Notification of the Award to the parties - Deposit of the Award

1. Once the Award has been made, the Arbitral Tribunal shall transmit

it to the secretariat in as many original versions as there are parties involved, plus one original version for the secretariat

2. Provided that the arbitration costs have been fully paid, the secretariat shall notify to each party, by registered letter or by courier service against receipt an original copy of the Award signed by the members of the Arbitral Tribunal as well as, by e-mail, a copy of same. The date of the sending by registered letter or by courier service against receipt shall be deemed to be date of notification.
3. When the place of arbitration is in Belgium and solely if one of the parties so requests the secretariat, within a period of three months from the notification of the Award, the Award shall be filed at the registry of the Civil Court of the place of the arbitration.

Article 25. - Final nature and enforceability of the Award

1. The Award is final and is not subject to appeal. The parties undertake to comply with the Award without delay.
2. By submitting their dispute to arbitration under CEPANI Rules and except where an explicit waiver is required by law, the parties waive their right to any form of recourse insofar as such a waiver can validly be made.

Article 26. - Correction and Interpretation of the Award – Remission of the award

1. On its own initiative, within one month of the notification of the Award to the parties, the Arbitral Tribunal may correct any clerical, computational or typographical error or any errors of a similar nature.
2. Within one month of the notification of the Award a party may file with the secretariat an application for the correction of an error of the kind referred to in paragraph 1. The application must be made in as many copies as stated in Article 4.1.
3. Within one month of the notification of the Award a party may file with the secretariat an application for the interpretation of a point or specific section of an Award.

The application must be made in as many copies as stated in Article 4.1.

4. After receipt of an application referred to in paragraphs 2 and 3, the Arbitral Tribunal shall grant the other party a short time limit which shall not exceed one month from the date of the application in order to submit any comments.
5. A decision to correct or interpret an Award shall take the form of an addendum and shall constitute an integral part of the Award. The provisions of Articles 21, 22 and 24 shall apply *mutatis mutandis*.
6. When a jurisdiction remits an Award to the Arbitral Tribunal the provisions of Articles 21, 22, 24 as well as the present Article 26 shall apply *mutatis mutandis* to any addendum or any other Award rendered in accordance with the decision to remit. CEPANI may take all necessary measures in order to allow the Arbitral Tribunal to comply with the decision to remit and may determine an advance payment for the purposes of recovering all additional arbitration fees and expenses of the Arbitral Tribunal as well as the additional administrative expenses of CEPANI.

ARBITRATION COSTS

Article 27. - Nature and Amount of the Arbitration Costs - Parties' Costs

1. The arbitration costs shall include the fees and expenses of the Arbitrator, as well as the administrative expenses of the secretariat. They shall be fixed by the secretariat on the basis of the amount of the principal claim and of any counterclaim, according to the Scale of Costs for Arbitration in effect on the date of the commencement of the arbitral proceedings.
2. The parties' costs include the expenses of the parties such as the expenses incurred for their defence and the expenses relating to the presentation of evidence by experts or witnesses. Schedule II sets

out a recommendation with regard to the said costs.

3. The secretariat may fix the arbitration costs at a higher or lower figure than that which would result from the application of the Scale of Costs for Arbitration, should this be deemed necessary due to the exceptional circumstances of the case.
4. Should the total amount in dispute exceed € 25.000,00 in the course of the proceedings, the secretariat may increase the amount of the arbitration costs in accordance with the Scale of Costs for Arbitration.

Article 28. - Advances on arbitration costs

1. The arbitration costs, as determined in accordance with Article 27.1 shall be paid to CEPANI prior to the transmission of the file by the secretariat to the Arbitral Tribunal.
2. Further advance payments may be required if and when any adjustments are made to the arbitration costs in the course of the proceedings.
3. The advance on arbitration costs, as well as the additional advance on arbitration costs shall be payable in equal shares by Claimant and Respondent. However, any party shall be free to pay the whole of the advance on arbitration costs should the other party fail to pay its share.
4. Where a counterclaim is filed, the secretariat may, at the request of the parties or one of them, or upon its own motion, fix separate advances on arbitration costs for the principal claim and the counterclaim.
When the secretariat has set separate advances on arbitration costs, each of the parties shall pay the advance on arbitration costs corresponding to its principal or counterclaim. The Arbitral Tribunal shall proceed only with respect to those claims or counterclaims in regard to which the advance on arbitration costs has been fully paid.
5. When a request for an additional advance on arbitration costs has not been complied with, and after consultation with the Arbitral Tribunal the secretariat may direct the Arbitral Tribunal to suspend its work and set a time limit, which must be not less than fifteen days, on the expiry of which the relevant claims or counterclaims on the basis of which the additional advance is calculated shall

be considered as withdrawn. A party shall not be prevented on the grounds of such a withdrawal from reintroducing the same claim or counterclaim at a later date in another proceeding.

Article 29. - Decisions on Arbitration Costs and Parties' Costs

1. The arbitration costs shall be finally fixed by the secretariat.
2. The final award shall mention the arbitration costs, as determined by the secretariat, and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.
3. The final Award may also decide which of the parties shall finally bear the parties' costs or in what proportion they shall be borne by the parties.

When the parties have reached an agreement on the allocation of the arbitration costs and parties' costs, the Award shall record such agreement.

FINAL PROVISIONS

Article 30. - Limitation of liability

1. Except in the case of fraud, the arbitrators shall not incur any liability for any act or omission when carrying out their functions of ruling on a dispute.
2. For any other act or omission in the course of an arbitration proceeding, the arbitrators, CEPANI and its members and personnel shall not incur any liability except in the case of fraud or gross negligence.

Article 31. - Residual provision

Unless otherwise agreed by the parties, for all issues that are not specifically provided for herein the Arbitral Tribunal and the parties shall act in the spirit of the Rules and shall make every reasonable effort to make sure that the Award is enforceable at law.