

SECTION III
TECHNICAL EXPERTISE

Standard clause for technical Expertise

The Parties who wish to refer to the CEPANI Rules for technical Expertise are advised to insert the following clause in their contracts:

“The Parties hereby undertake to apply the CEPANI Rules of Technical Expertise for all disputes arising out of or in relation with this Agreement”.

The following provisions may be added to this clause¹:

“The seat of the technical Expertise shall be [___]”.

“The proceedings shall be conducted in the [___] language”.

“The technical Expertise shall be carried out by [one] or [three] Experts”.

“The findings and conclusions of the Expert(s) shall [not] be binding on the Parties”.

PRELIMINARY PROVISIONS

Article 1. Belgian Centre for Mediation and Arbitration

The Belgian Centre for Arbitration and Mediation (“CEPANI”) is an independent body which administers technical Expertise proceedings in accordance with its Rules. It does not itself resolve disputes and it does not act as technical Expert.

1. Delete as appropriate.

COMMENCEMENT OF THE PROCEEDINGS

Article 2. Request for Technical Expertise

1. A Party wishing to have recourse to technical Expertise under the CEPANI Rules shall submit its Request for Technical Expertise to the Secretariat.

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

- a) name, first name and the name in full, function, address, telephone and fax numbers, valid e-mail addresses and VAT-number, if any, of each of the Parties;
- b) a succinct recital of the nature and circumstances of the dispute giving rise to the claim;
- c) the purpose and the nature of the technical Expertise;
- d) any comments as to the place of the technical Expertise and the language of the technical Expertise.

Together with the Request, Claimant shall provide copies of all agreements, in particular the technical Expertise agreement and other relevant documents.

The Request for Technical Expertise and the documents annexed thereto must be submitted in electronic form and in one hard copy.

2. Claimant shall also attach to the Request for Technical Expertise 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 Technical Expertise and the annexes thereto and the payment of the registration costs shall be deemed to be the date of commencement of the technical Expertise. Each Request for technical Expertise must be accompanied by an advance payment of € 750,00 excl. VAT on administrative costs.

Such payment is non-refundable, and shall be credited to the Claimant's portion of the advance on costs for technical Expertise. The Secretariat shall confirm this date to the Parties.

Article 3. Answer to the Request for Technical Expertise

1. Within fifteen days from the date of commencement of the for technical Expertise proceedings, Respondent shall send its Answer to the Request for Technical Expertise to the Secretariat.

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

- a) name, first name and the name in full, function, address, telephone and fax numbers, valid e-mail address and VAT-number, if any, of Respondent;
- b) its comments on the nature and circumstances of the dispute that gives rise to the claim;
- c) its response to the Expert's mission as defined by Claimant;
- d) any comments as to the place of the technical Expertise and the language of the technical Expertise.

The Answer and the documents annexed thereto must be submitted in electronic form and in one hard copy.

2. Respondent shall also attach to the Answer proof of the dispatch, within the same time limit of fifteen days, to Claimant of the Answer and the documents annexed thereto.

3. This time limit may be extended pursuant to a reasoned Request of Respondent, or on its own motion, by the Secretariat.

Article 4. Lack of a *prima facie* technical Expertise agreement

In the event that there is no *prima facie* technical Expertise agreement, the technical Expertise may not proceed should Respondent not answer within

the period of fifteen days mentioned in Article 3, or should Respondent refuse technical Expertise in accordance with the CEPANI Rules.

Article 5. Effect of the technical Expertise agreement

1. When the Parties agree to resort to CEPANI for technical Expertise, they thereby submit to the Rules, including the annexes, in effect on the date of the commencement of the technical Expertise proceedings, unless they have agreed to submit to the Rules in effect on the date of their technical Expertise agreement.

2. If, notwithstanding a *prima facie* technical Expertise agreement, one of the Parties refuses to submit to technical Expertise, or fails to take part in the technical Expertise, the technical Expertise shall nevertheless proceed.

Article 6. Written notifications or communications and time limits

1. The Request for Technical Expertise, the Answer to the Request for Technical Expertise, all pleadings and, the appointment of the Experts, subject to Article 15, paragraph 2 shall be valid if the notification or communicated is made in electronic form to a valid e-mail address, which allows proof of the sending. If no valid e-mail address is known for a Party, the notification or communication shall be validly made if it is remitted by courier service against receipt, sent by registered mail, or by fax.

2. If a Party is represented by Counsel, all notifications or communications shall be made to the latter, unless that 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 by the other Party.

3. A notification or communication, made in accordance with paragraph 1, shall be deemed to have been made when it was received or should have been received by the Party itself, by its Representative or its Counsel.

4. Periods of time specified in the present 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 2. 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 sent timely if it is dispatched in accordance with paragraph 1 prior to, or on the date of, the expiry of the time limit.

THE EXPERT(S)

Article 7. 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 for proceedings organized by CEPANI, may serve as Experts in technical Expertise proceedings organized by CEPANI.

2. The Appointments Committee or the Chairman shall appoint the Expert(s). The Parties may nominate the Expert(s) by mutual consent, subject to the Appointments Committee or the Chairman.

3. Prior to his appointment or confirmation, the Expert whose appointment is being proposed, shall sign a statement of availability, acceptance and independence. 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 Expert'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 Expert 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 technical Expertise.

5. The decisions of the Appointments Committee or the Chairman as to the appointment, approval or replacement of an Expert shall be final. The reasons for the decision shall not be communicated.

6. By accepting to serve, every Expert undertakes to carry out his responsibilities until the end in accordance with these Rules.

7. Unless otherwise agreed by the Parties, the Expert shall not act as an arbitrator, Representative or Counsel of a Party in arbitral or judicial proceedings relating to the dispute which was the subject of the technical Expertise proceedings.

Article 8. Appointment of the Expert

1. The Appointments Committee or the Chairman shall appoint, or confirms the nomination of, the Expert(s) in accordance with the Rules set out hereafter.

2. The Parties shall define the Expert's mission. If the Expert is appointed in the course of an arbitration procedure, the Arbitral Tribunal shall define the mission of the Expert after having consulted the Parties. If the Expert is appointed in the course of a mediation, the Mediator shall define the mission of the Expert after having consulted the Parties.

3. The Appointments Committee or the Chairman appoints or approves the nomination of the Expert(s) after the payment by the Parties, or by

one of them, of the advance on technical Expertise costs in accordance with the provisions of Article 17. It thereby takes into account more particularly the availability, the qualifications and the ability of the Expert(s) to conduct the technical Expertise in accordance with these Rules.

Article 9. Replacement of the Expert

1. In the event of an Expert's death, challenge, accepted withdrawal, or if there is a cause preventing him from fulfilling his duties, or upon Request of all Parties, the Expert shall be replaced.

2. An Expert shall also be replaced when the Appointments Committee or the Chairman finds that the Expert 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 Chairman shall decide on the matter after having invited the Expert concerned, the other Experts, if any, and the Parties to comment in writing to the Secretariat within the time limit allotted by the latter. Such comments shall be communicated to the Parties and to the Expert(s).

THE TECHNICAL EXPERTISE

Article 10. Transmission of the file to the Expert

Provided that the advance on technical Expertise costs set out in Article 17 has been fully paid, the Secretariat shall transmit the file to the Expert(s) as soon as the latter has been appointed or his nomination approved.

Article 11. Language of the technical Expertise

1. The language of the technical Expertise shall be determined by mutual agreement between the Parties. Failing such an agreement, the language or languages of the technical Expertise shall be determined by the Expert(s), due regard being given to the circumstances of the case and, in particular, to the language of the contract.
2. The Expert(s) shall have full authority to decide which of the Parties shall bear the translation costs, if any, and to what extent.

Article 12. Place of the technical Expertise

1. The Appointments Committee or the Chairman shall determine the place of the technical Expertise, unless the Parties have agreed this.
2. Unless otherwise agreed by the Parties and after having consulted with them, the Expert(s) may decide to hold his(their) hearings and meetings at any other location that he(they) consider(s) appropriate.

Article 13. Examination of the case

1. After having duly heard the Parties, the Expert(s) shall proceed with his(their) appraisal in accordance with his(their) mission.
2. The Parties shall appear in person or through duly authorized Representatives or Counsel.
3. The Parties shall assist the Expert(s) in every way in carrying out his(their) mission, namely by providing him(them) with the necessary documents and giving access to the sites where he(they) may require verifications and investigations to be carried out.

4. Unless otherwise agreed, the findings and conclusions of the Expert(s) shall be binding on the Parties in the same manner as the terms of their contract.

5. The hearings shall not be public. Save with the approval of the Expert(s) and the Parties, persons not involved in the proceedings shall not be admitted.

6. The Expertise proceedings shall be confidential only if Parties Request so.

THE TECHNICAL REPORT

Article 14. The Technical report

The mission of the Expert(s) shall end when he(they) render(s) his(their) final Technical report describing his(their) findings and conclusions.

Article 15. Notification of the Technical report

1. Once the Technical report has been drawn up, the Expert(s) shall transmit it to the Secretariat in as many original versions as there are Parties involved, plus one original version for the Secretariat.

2. The Secretariat shall notify an original of the signed Technical report to the Parties by registered mail or by courier service against receipt and a copy shall be sent by mail, provided that the technical Expertise costs have been fully paid to the CEPANI by the Parties or by one of them.

TECHNICAL EXPERTISE COSTS

Article 16. Nature and amount of the technical Expertise costs

1. The technical Expertise costs shall include the fees and expenses of the Expert(s), as well as the administrative expenses of the Secretariat. They

shall be fixed by the Secretariat due regard being given to the nature and scope of his (their) mission.

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. They are not included in the technical Expertise costs and are borne by this Party.

3. The Secretariat may adjust the amount of the technical Expertise costs at any time during the proceedings if the circumstances of the case or if new missions reveal that the scope of the case is greater than originally considered.

Article 17. Advance on technical Expertise costs

1. The advance required to cover the technical Expertise costs, as determined in accordance with Article 16, paragraph 1 shall be paid to CEPANI prior to the appointment or the approval of the nomination of the Expert(s) by the Appointments Committee or the Chairman.

2. At the time of appointment of the Expert or the determination of his or her mission, the advance on cost of is established in consultation with the Expert.

3. Further advance payments may be required if and when any adjustments are made to the technical Expertise costs in the course of the proceedings.

4. The advance on technical Expertise costs, as well as the additional advance on technical Expertise 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 technical Expertise costs should the other Party fail to pay its share.

5. When the advance on technical Expertise costs exceed € 50.000,00, an irrevocable first demand bank guarantee may be posted to cover such payment.

6. When a Request for an additional advance on technical Expertise costs has not been complied with, and after consultation with the Expert(s), the Secretariat may direct the Expert(s) to suspend his(their) work and set a time limit, which must be not less than fifteen days, on the expiry of which the extension of the mission on the basis of which the additional advance was calculated shall be considered as withdrawn. A Party shall not be prevented on the ground of such a withdrawal from reintroducing the same claim or counterclaim at a later date in another proceeding.

Article 18. Decisions on technical Expertise costs

1. The technical Expertise costs shall be finally fixed by the Secretariat.

2. Unless otherwise agreed, the Parties shall each bear one half of the costs of the technical Expertise.

3. The Technical report shall mention the technical Expertise costs, as determined by the Secretariat, and set out the agreement between the Parties, if any, on the allocation of the technical Expertise costs.

FINAL PROVISIONS

Article 19. Limitation of liability

For any act or omission in the course of technical Expertise proceedings, the Expert, CEPANI and its members and personnel shall not incur any liability except in the case of fraud or gross negligence.