

# SECTION II

# MINI-TRIAL

## STANDARD MINI-TRIAL CLAUSE

The Parties who wish to refer to the CEPANI mini-trial Rules are advised to insert the following clause in their contracts:

*“The Parties hereby undertake to apply the CEPANI mini-trial Rules for all disputes arising out of or in relation with this agreement.”*

The following provisions may be added to this clause:

*“The seat of the mini-trial shall be [\_\_\_]”.*

*“The proceedings shall be conducted in the [\_\_\_] language”.*

*“Should the mini-trial fail, the dispute shall be finally settled under the CEPANI Rules of Arbitration by one or more Arbitrators appointed in accordance with those Rules”.*

## PRELIMINARY PROVISIONS

### Article 1. Belgian Centre for Mediation and Arbitration

The Belgian Centre for Arbitration and Mediation (“CEPANI”) is an independent body which administers mini-trial proceedings in accordance with its Rules. It does not itself resolve disputes and it does not act as President of the Mini-trial Committee.

## GENERAL PROVISIONS

### Article 2. Scope

A mini-trial agreement may be set forth in a clause of the contract or entered into after the dispute has arisen.

# COMMENCEMENT OF THE PROCEEDINGS

## Article 3. Request for Mini-trial

1. A Party wishing to have recourse to Mini-trial under the CEPANI Rules shall submit its Request for Mini-trial to the Secretariat.

The Request for Mini-trial 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) a statement to the relief sought, a summary of the grounds for the claim, and, if possible, a financial estimate of the amount of the claim;
- d) name, first name and the name in full, function, address and valid e-mail address, telephone and fax numbers of the assessor appointed by Claimant to sit on the Mini-trial Committee;
- e) any comments as to the place of the Mini-trial, the language of the Mini-trial and the applicable Rules of law.

Together with the Request, Claimant shall provide copies of all agreements, in particular the Mini-trial agreement, the correspondence between the Parties and other relevant documents.

The Request for Mini-trial 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 Mini-trial 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 Mini-trial and the annexes thereto and the payment of the registration costs such as determined under Article 4 of the annex I.B shall be deemed to be the date of commencement of the Mini-trial proceedings. The Secretariat shall confirm this date to the Parties.

## Article 4. Answer to the Request for Mini-trial and filing of a counterclaim

1. Within twenty-one days from the date of the commencement of the mini-trial proceedings, Respondent shall send its Answer to the Request for Mini-trial 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 number, valid e-mail address and VAT-number, if any, of Respondent;
- b) its comment on to the nature and circumstances of the dispute that gives rise to the claim;
- c) its response to the relief sought;
- d) name, first name, function, address and valid e-mail address, telephone and fax number of the assessor nominated by the Respondent to sit in the Mini-trial Committee;
- e) any comments as to the place of the Mini-trial, the language of the Mini-trial and the applicable Rules of law.

Together with the Answer, a general or specific grant of authority of the assessor and any other relevant document must be filed.

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

### **Article 5. Lack of a *prima facie* Mini-trial agreement**

In the event that there is no *prima facie* Mini-trial agreement, the Mini-trial may not proceed should Respondent not answer within the period of twenty-one days mentioned in Article 4, or should Respondent refuse Mini-trial in accordance with the CEPANI Rules.

### **Article 6. Effect of the Mini-trial agreement**

1. When the Parties agree to resort to CEPANI for a Mini-trial, they thereby submit to the Rules, including the annexes which are in effect on the date of the commencement of the mini-trial proceedings, unless they have agreed to submit to the Rules in effect on the date of their Mini-trial agreement.

2. Unless otherwise agreed by the Parties, the Mini-trial shall proceed in accordance with the provisions of these Rules.

3. If necessary, and after having consulted with his/her Assessors, the President of the Mini-trial Committee may depart from the Rules set forth herein.

### **Article 7. Written notifications or communications and time limits**

1. The Request for Mini-trial, the Answer to the Request for Mini-trial, all pleadings and the appointment of the Mini-trial Committee shall be valid if the notification or communication 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 is received or should have been received by the Party itself, by its Representative or its Counsel.

4. Periods of time fixed under 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 1. 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.

## **Article 8. Judicial or arbitral proceedings**

1. During the Mini-trial, the Parties undertake not to initiate or continue any judicial or arbitral proceedings relating to the same dispute or part of it, except as a conservatory measure.

2. Notwithstanding paragraph 1 hereinabove, the Parties may present to the Court or to the Arbitral Tribunal a Request for conservatory or provisional measures. Such a Request shall not entail a waiver of the right to continue with the Mini-trial.

## THE MINI-TRIAL COMMITTEE

### Article 9. 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 President of the Mini-trial Committee in Mini-trials organized by CEPANI.

2. The Appointments Committee or the Chairman shall appoint the President of the Mini-trial Committee. The Parties may nominate the President of the Mini-trial Committee by mutual consent, subject to the approval of the Appointments Committee or the Chairman.

3. Prior to his/her appointment or confirmation, the President of the Mini-trial Committee whose appointment is being proposed shall sign a statement of availability, acceptance and independence. He/she shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature to call into question the President of the Mini-trial Committee'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. The President of the Mini-trial Committee 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 2 which may arise during the Mini-trial.

5. The decisions of the Appointments Committee or the President as to the appointment or replacement of the President of the Mini-trial Committee shall be final. The reasons for the decision shall not be communicated.

6. By accepting to serve, every President of the Mini-trial Committee undertakes to carry out his/her responsibilities until the end in accordance with these Rules.

7. Unless otherwise agreed by the Parties, the President of the Mini-trial Committee 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 a Mini-trial.

#### **Article 10. Composition and Task of the Mini-trial Committee**

1. The Mini-trial Committee shall be composed of a President of the Mini-trial Committee and two Assessors appointed by and empowered to bind each Party on the basis of a general or specific grant of authority.

2. Should more than two Parties be involved in the mini-trial, then each Party shall appoint one assessor to sit on the Mini-trial Committee, unless otherwise agreed.

3. The Appointments Committee or the President appoints or confirms the President of the Mini-trial Committee after the payment by the Parties, or by one of them, of the advance on Mini-trial costs in accordance with the provisions of Article 21. It will thereby take into account more particularly the availability, the qualifications and the ability of the President of the Mini-trial Committee to conduct the Mini-trial in accordance with these Rules.

4. The President of the Mini-trial Committee is empowered to assist the Parties in their attempt to reach an amicable settlement of their dispute. He/she shall attempt to reach this agreement by consulting with his/her Assessors.

5. The Assessors are senior officials nominated by each Party and whose task is to attempt to reach an amicable settlement on the dispute in the name and on behalf of the Parties who nominated them and under the guidance of the President of the Mini-trial Committee. The assessor may be the chief executive of the company or a senior executive, or he/she may be a Third Party, such as a lawyer or any other person of trust authorized by the Party concerned to enter into commitments on its behalf.

### **Article 11. Replacement of the President of the Mini-trial Committee**

1. In the event of the President of the Mini-trial Committee's death, challenge, accepted withdrawal, or if there is a cause preventing him/her from fulfilling his/her duties, or upon Request of all Parties, the President of the Mini-trial Committee shall be replaced.

2. The President of the Mini-trial Committee shall also be replaced when the Appointments Committee or the President finds that the President of the Mini-trial Committee is prevented *de jure* or *de facto* from fulfilling his/her 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 President of the Mini-trial Committee, the Assessors 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 Mini-trial Committee.

## **THE MINI-TRIAL PROCEEDINGS**

### **Article 12. Transmission of the file to the Mini-trial Committee**

Provided that the advance on Mini-trial costs set out in Article 21 has been fully paid, the Secretariat shall transmit the file to the Mini-trial Committee as soon as the latter has been appointed.

### **Article 13. Language of the Mini-trial**

1. The language of the Mini-trial shall be determined by mutual agreement between the Parties. Failing such an agreement, the language or languages of the Mini-trial shall be determined by the President of the Mini-trial Committee, due regard being given to the circumstances of the case and, in particular, to the language of the contract.

2. The President of the Mini-trial Committee, having consulted with his/her Assessors, shall have full authority to decide which of the Parties shall bear the translation costs, if any, and to what extent.

### **Article 14. Place of the Mini-trial**

1. The Appointments Committee or the President shall determine the place of the Mini-trial, unless the Parties have agreed this.

2. Unless otherwise agreed by the Parties and after having consulted with them, the Mini-trial Committee may decide to hold its hearings and meetings at any other location that it considers appropriate.

3. The Mini-trial Committee may deliberate at any place that it considers appropriate.

### **Article 15. Examination of the case**

1. The President of the Mini-trial Committee, having consulted with his/her Assessors, may ask the Parties to provide additional information and exhibits.

2. After consultation with his/her Assessors, the President of the Mini-trial Committee shall determine the day, time and place of a meeting with the Parties.

3. The President of the Mini-trial Committee shall chair the meeting and offer the Parties an opportunity to put forth their views.
4. The hearings shall not be public. Save with the approval of the Mini-trial Committee and the Parties, persons not involved in the proceedings shall not be admitted.
5. The Parties shall appear in person or through duly authorized Representatives or Counsel.
6. After the meeting, the President of the Mini-trial Committee shall consult with his/her Assessors and attempt to reach a consensus. In this respect, the President of the Mini-trial Committee shall have the broadest powers to undertake whatever, in his/her opinion, may reasonably bring about a settlement. To this end, he/she may consult, *inter alia*, with each of his/her Assessors separately.

#### **Article 16. Confidentiality of the Mini-trial Proceedings**

Unless it has been agreed otherwise by the Parties or there is a legal obligation to disclose, the mini-trial proceedings shall be confidential.

#### **Article 17. Confidentiality of communications**

All communications between the Parties and/or the President of the Mini-trial Committee as from his/her appointment or by the latter for the purposes of the Mini-trial, are confidential. The Parties undertake to refrain from making any reference whatsoever to the Mini-trial outside the context of the Mini-trial. Unless otherwise agreed by the Parties, this shall however not apply to the notification of the end of the Mini-trial as mentioned in Article 19 herein, nor to any settlement reached by the Parties at the end of the Mini-trial.

Pre-existing documents or documents obtained by a Party outside of the context of the Mini-trial and which are communicated in the context and for the purposes of the Mini-trial between the Parties, to the President of the Mini-trial Committee or by the President of the Mini-trial Committee to the Parties or to one of the Parties are not covered by this confidentiality rule. As the case may be, said documents may subsequently be used by the Parties for other purposes than the Mini-trial, unless they were specifically communicated as confidential documents as part of the Mini-trial.

## **SETTLEMENT AND END OF THE MINI-TRIAL**

### **Article 18. Settlement**

1. Should these consultations lead to a settlement, the agreement shall be set forth in writing and signed by the Assessors in the name and on behalf of the Parties. This document sets out the precise undertakings of each of the Parties.

Subsequently, the President of the Mini-trial Committee shall record in a set of minutes the fact that the Parties have reached an agreement. The said minutes shall be signed by the President of the Mini-trial Committee and the Assessors, in the name and on behalf of the Parties. A copy of the minutes is sent to the Secretariat.

2. In the event that the consultations fail to bring about a settlement, the President of the Mini-trial Committee shall record this fact in the minutes, which he/she shall sign and immediately notify to the Secretariat.

### **Article 19. End of the Mini-trial**

1. When an agreement is reached, the Mini-trial shall end when the Assessors, in the name and on behalf of the Parties and the President of the Mini-trial Committee, the minutes stating that an agreement has been reached.

2. If no agreement is reached, the Mini-trial shall end as soon as the President of the Mini-trial Committee notifies to the Secretariat the minutes stating that no agreement has been reached.
3. Should one of the Parties fail to appear in the proceedings after having been duly summoned, the Mini-trial shall end as soon as the President of the Mini-trial Committee informs the Secretariat in writing of this fact.
4. At any time, either Party may refuse to continue the Mini-trial. In such event, the Mini-trial ends when written notification of that Party's refusal is sent to the President of the Mini-trial Committee, if already constituted, and to the Secretariat.
5. The President of the Mini-trial Committee may also decide, after consultation with his/her Assessors, that there is no further justification for continuing with the Mini-trial. In such event, the Mini-trial ends as soon as the President of the Mini-trial Committee informs the Secretariat in writing of this fact.

## **COSTS OF MINI-TRIAL**

### **Article 20. Nature and amount of the Mini-trial costs**

1. The Mini-trial costs shall include the fees and expenses of the President of the Mini-trial Committee, as well as the administrative expenses of the Secretariat. They shall be fixed by the Secretariat on the basis of the amount of the claims, according to the Scale of Mini-trial costs in effect on the date of the commencement of the mini-trial proceedings.
2. The costs of the assessor nominated by a Party shall be borne by this Party. Other costs and expenses relating to the Mini-trial, such as the expenses incurred by a Party for their defence and the expenses relating to the presentation of evidence by Experts or witnesses, are not included in the Mini-trial costs and are borne by this Party.

3. The Secretariat may fix the Mini-trial costs at a higher or lower figure than that which would result from the application of the Scale of Mini-trial Costs, should this be deemed necessary due to the exceptional circumstances of the case.

4. If the amount in dispute is not specified, totally or partially, the Secretariat, may determine, taking into account all available information, the amount in dispute on the basis of which the Mini-trial costs will be calculated.

5. The Secretariat may adjust the amount of the Mini-trial costs at any time during the proceedings if the circumstances of the case or if new claims reveal that the scope of the dispute is greater than originally considered.

#### **Article 21. Advance on Mini-trial costs**

1. The advance required to cover the Mini-trial costs as determined in accordance with Article 20, paragraph 1 shall be paid to CEPANI prior to the appointment of the President of the Mini-trial Committee by the Appointments Committee or the President.

2. Further advance payments may be required if and when any adjustments are made to the Mini-trial costs in the course of the proceedings.

3. The advance on Mini-trial costs, as well as the additional advance on Mini-trial costs, shall be payable in equal shares by the Parties. However, any Party shall be free to pay the whole of the advance on Mini-trial costs should the other Party fail to pay its share.

4. When the advance on Mini-trial costs exceeds € 50.000,00 a bank guarantee may be posted to cover such payment.

5. When a Request for an additional advance on Mini-trial costs has not been complied with, and after consultation with the Mini-trial Committee, the Secretariat may direct the Mini-trial Committee 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 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 22. Decision on Mini-trial costs**

1. The Mini-trial costs shall be finally fixed by the Secretariat.
2. Unless otherwise agreed, the Parties shall each bear one half of the costs of the Mini-trial.
3. The minutes that state that the Parties have reached an agreement, set forth the Mini-trial costs, as determined by the Secretariat, and set out the agreement between the Parties, if any, on the allocation of the Mini-trial costs.

## **FINAL PROVISIONS**

### **Article 23. Limitation of liability**

For any act or omission in the course of mini-trial proceedings, the President of the Mini-trial Committee, CEPANI and its members and personnel shall not incur any liability except in the case of fraud or gross negligence.