



# CEPANI

THE BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

# ARBITRATION RULES



In force as from 1 January 2013



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**SECTION I**  
**ARBITRATION**

## STANDARD ARBITRATION CLAUSE

The parties who wish to refer to the CEPANI arbitration rules are advised to insert the following clause in their contracts:

### - English

*« Any disputes arising out of or in connection with this Agreement shall be finally settled under the CEPANI Rules of Arbitration by one or more arbitrators appointed in accordance with the said Rules »*

The following provisions may be added to this clause:

*« The arbitral tribunal shall be composed of (one or three) arbitrators »<sup>1</sup>  
« The place of the arbitration shall be (town and country) »  
« The arbitration shall be conducted in the (...) language »  
« The applicable rules of law are (...) »*

The parties that so wish may also stipulate that the arbitration must necessarily be preceded by a mini-trial or by an attempt to mediate.

In the event that the parties involved are not Belgian, within the meaning of Article 1718, of the Belgian Judicial Code, they may also stipulate the following:

*« The parties expressly exclude any application for setting aside the arbitral award »*

### - French

*« Tous différends découlant du présent contrat ou en relation avec celui-ci seront tranchés définitivement suivant le règlement d'arbitrage du CEPANI par un ou plusieurs arbitres nommés conformément à ce règlement. »*

Cette clause peut être complétée par les dispositions suivantes :

*« Le tribunal arbitral sera composé (d'un ou de trois) arbitre(s) »<sup>2</sup>  
« Le lieu de l'arbitrage sera (ville et pays) »*

<sup>1</sup> Delete as appropriate

<sup>2</sup> Biffer la mention inutile

*« La langue de la procédure sera le (...) »*

*« Les règles de droit applicables sont (...) »*

Les parties qui le souhaitent peuvent également prévoir que l'arbitrage doit nécessairement être précédé d'un mini-trial ou d'une tentative de médiation.

S'agissant de parties qui ne sont pas belges au sens de l'article 1718 du Code judiciaire, elles peuvent en outre préciser que :

*« Les parties excluent expressément toute action en annulation de la sentence arbitrale »*

### **- Dutch**

*« Alle geschillen die uit of met betrekking tot deze overeenkomst mochten ontstaan, zullen definitief worden beslecht volgens het Arbitragereglement van CEPINA, door één of meer arbiters die conform dit reglement zijn benoemd. »*

Dit type beding kan worden aangevuld met de volgende bepalingen:

*« Het scheidsgerecht zal uit (een of drie) arbiters bestaan »<sup>3</sup>*

*« De plaats van de arbitrage is (stad en land) »*

*« De taal van de arbitrage is (...) »*

*« De toepasselijke rechtsregels zijn (...) »*

De partijen die dit wensen, kunnen eveneens bepalen dat de arbitrage noodzakelijkerwijs moet worden voorafgegaan door een mini-trial of een poging tot mediatie.

Wanneer het om partijen gaat die niet Belgisch zijn in de zin van artikel 1718 van het Gerechtelijk Wetboek, kunnen zij bovendien preciseren:

*« De partijen sluiten uitdrukkelijk iedere vordering tot vernietiging van de arbitrale uitspraak uit »*

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<sup>3</sup> Schrappen was niet past

## **-German**

*« Alle aus oder in Zusammenhang mit dem gegenwärtigen Vertrag sich ergebenden Streitigkeiten werden nach der Schiedsgerichtsordnung des CEPANI von einem oder mehreren gemäß dieser Ordnung ernannten Schiedsrichtern endgültig entschieden. »*

Diese Klausel kann noch durch die folgenden Bestimmungen ergänzt werden:

*« Das Schiedsgericht besteht aus (einem einzigen oder drei) Schiedsrichter(n) »<sup>4</sup>*

*« Der Ort des Schiedsverfahrens ist (Stadt und Land) »*

*« Die Verfahrenssprache ist (...) »*

*« Die anwendbare Rechtsregeln sind (...) »*

Die Parteien können vereinbaren, dass vor Einleitung des Schiedsverfahrens ein Mini-Trial Verfahren oder ein Mediationsversuch durchgeführt werden muss.

Wenn die am Schiedsverfahren beteiligten Parteien nicht gemäß Artikel 1718 des Gerichtsgesetzbuchs als belgische Partei gelten, können sie auch folgendes vereinbaren:

*« Die Parteien schließen ausdrücklich jede Aufhebungsklage gegen den Schiedsspruch aus »*

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<sup>4</sup> Nichtzutreffendes streichen



## UNCITRAL ARBITRATION CLAUSE

The Belgian Centre for Arbitration and Mediation (CEPANI) shall act as Appointing Authority under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), if the parties have so agreed. In such case, it is recommended that the parties stipulate the following model clause in their contracts :

### **-English**

*« Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules.*

- a) The appointing authority shall be the Belgian Centre for Arbitration and Mediation (CEPANI)*
- b) The number of arbitrators shall be ... [one or three]*
- c) The place of arbitration shall be ... [town and country]*
- d) The language to be used in the the arbitral proceedings shall be ... ».*

If the parties wish to exclude recourse against the arbitral award that may be available under the applicable law, they may add a provision to that effect as suggested below, considering, however, that the effectiveness and conditions of such an exclusion depend on the applicable law.

### *« Waiver*

*The parties hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under the applicable law ».*

## **-French**

*« Tout litige, différend ou réclamation né du présent contrat ou se rapportant au présent contrat, ou à son inexécution, à sa résolution ou à sa nullité, est tranché par voie d'arbitrage conformément au Règlement d'arbitrage de la CNUDCI.*

*(a) L'autorité de nomination est le Centre belge d'arbitrage et de médiation (CEPANI).*

*(b) Le nombre d'arbitres est fixé à.... (un ou trois).*

*(c) Le lieu de l'arbitrage est... (ville et pays).*

*(d) La langue à utiliser pour la procédure est... ».*

Si les parties souhaitent exclure les voies de recours que la loi applicable leur offre contre la sentence arbitrale, elles peuvent ajouter à cet effet une clause du type proposé ci-dessous, en tenant compte toutefois du fait que l'efficacité et les conditions d'une telle exclusion dépendent de la loi applicable.

### *« Renonciation*

*Les parties renoncent par la présente à leur droit à toute forme de recours contre une sentence devant une juridiction étatique ou une autre autorité compétente, pour autant qu'elles puissent valablement y renoncer en vertu de la loi applicable ».*

## **-Dutch**

*« Elk geschil, dispuut of vordering die uit of met betrekking tot deze overeenkomst, de schending, de beëindiging of ongeldigheid ervan, mocht ontstaan, wordt beslecht door middel van arbitrage overeenkomstig het Arbitragereglement van UNCITRAL.*

*(a) De benoemingsinstantie is het Belgisch Centrum voor Arbitrage en Mediatie (CEPANI)*

*(b) Het scheidsgerecht bestaat uit [één/drie] arbiter(s).*

*(c) De plaats van de arbitrage is ... [stad en land].*

*(d) De taal van de procedure is... ».*

Dit type beding kan aangevuld worden met de volgende bepaling :

Indien de partijen iedere mogelijkheid van verhaal tegen de arbitrale uitspraak die het toepasselijk recht hen biedt wensen uit te sluiten, kunnen zij een bepaling toevoegen zoals hierna bepaald. Zij dienen er evenwel mee rekening te houden dat de doeltreffendheid en de voorwaarden van dergelijke uitsluiting afhangen van het toepasselijk recht.

*« Afstand*

*De partijen doen hierbij afstand van hun recht op iedere vorm van verhaal tegen een arbitrale uitspraak bij een rechtbank of bevoegde autoriteit, voor zover dergelijke afstand geldig gedaan kan worden volgens het toepasselijk recht ».*

## **SECTION I : ARBITRATION INTRODUCTORY 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 and, in the case of an investment dispute, when the authorities have agreed to arbitration.
- (vi) « Arbitral Tribunal » means the arbitrator or arbitrators.
- (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.

## COMMENCEMENT OF THE PROCEEDINGS

### Article 3. - Request for Arbitration

1. A party wishing to have recourse to arbitration 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, corporate name, function, address, telephone and fax numbers, e-mail address 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) all relevant information that may assist in determining the number of arbitrators and their choice in accordance with the provisions of Article 15 and any nomination of an arbitrator required thereby;
- f) 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 a number of copies sufficient to provide one copy for each arbitrator and one for the secretariat.

2. Claimant shall 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 and the annexes thereto and the payment of the registration costs such as determined under point 2 of 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 4. - Answer to the Request for Arbitration and Filing of a Counterclaim**

1. Within one month 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, corporate name, function, address, telephone and fax numbers, e-mail address and VAT-number, if any, of Respondent;
- b) name, first name, corporate name, function, 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 on the nature and circumstances of the dispute that gives rise to the claim;
- d) its response to the relief sought;
- e) its comments concerning the number of arbitrators and their choice in the light of Claimant's proposals, as well as the nomination of any arbitrator that the Respondent has to make;
- f) 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, if any, shall be supplied in a number of copies sufficient to provide one copy for each arbitrator and one for the secretariat.

2. Respondent shall attach to the Answer proof of the dispatch, within the same time limit of one month, 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.

Claimant may submit written observations on the counterclaim within a period of one month from receipt of the counterclaim communicated by the secretariat.

#### **Article 5. - Extension of the Time Limit for Filing the Answer**

The time limit mentioned in Article 4 of these Rules may be extended, pursuant to a reasoned request of one of the parties or on its own motion, by the secretariat.

#### **Article 6. - *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 4, or should Respondent refuse arbitration under the CEPANI Rules.

#### **Article 7. - 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 non-existence of the contract, provided that the Arbitral Tribunal upholds the validity of the arbitration agreement.

#### **Article 8. - 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 each of the arbitrators. 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 arbitrators 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 31.2, 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.

## **MULTIPLE PARTIES, MULTIPLE CONTRACTS, INTERVENTION AND CONSOLIDATION**

### **Article 9. - Multiple Parties**

1. An arbitration may take place between more than two parties when they have agreed to have recourse to arbitration under the CEPANI Rules.
2. Each party may make a claim against any other party, subject to the limitations set out in Article 23.8 of the Rules.

### **Article 10. - Multiple Contracts**

1. Claims arising out of various contracts or in connection with same may be made in a single arbitration.

This is the case when the said claims are made pursuant to various arbitration agreements:

- a) if the parties have agreed to have recourse to arbitration under the CEPANI Rules and
  - b) if all the parties to the arbitration have agreed to have their claims decided within a single set of proceedings.
2. Differences concerning the applicable rules of law or the language of the proceedings do not give rise to any presumption as to the incompatibility of the arbitration agreements.
  3. Arbitration agreements concerning matters that are not related to one another give rise to a presumption that the parties have not agreed to have their claims decided in a single set of proceedings.
  4. Within a single set of proceedings each party may make a claim against any other party, subject to the limitations set out in Article 23.8 of the Rules.

#### **Article 11. - Intervention**

1. A third party may request to intervene in the proceedings and any party to the proceedings may seek to have a third party joined.

The intervention may be allowed when the third party and the parties to the dispute have agreed to have recourse to arbitration under the CEPANI Rules.

2. No intervention may take place after the Appointments Committee or the President has appointed or confirmed each of the members of the Arbitral Tribunal, unless all the parties, including the third party, have agreed otherwise.
3. The Request for Intervention shall be addressed to the secretariat and, if it is already constituted, to the Arbitral Tribunal. The party requesting intervention shall enclose with its Request proof of the notification of the Request to the parties to the proceedings, as the case may be, to the third party whose joinder is requested and, if it is already constituted, to the Arbitral Tribunal.
4. The Request for Intervention shall *inter alia* include the following information:

- a) name, first name, corporate name, function, address, telephone and fax numbers, e-mail address and VAT-number, if any, of the party requesting the intervention, of each of the parties and, if it is not the party requesting the intervention, of the third party;
- b) name, first name, corporate name, function, address, telephone and fax numbers, e-mail address of the person or persons representing the party requesting the intervention in the arbitration;
- c) a succinct recital of the nature and circumstances giving rise to the Request;
- d) information concerning the place and language of the pending arbitration proceedings as well as concerning the applicable rules of law;
- e) a statement of the relief sought by the Request for Intervention, a summary of the grounds for the Request, and, if possible, of the financial effect of the Request for Intervention on the amounts claimed.

A copy of the agreements entered into and in any event of the arbitration agreement that binds the parties and the third party and any other useful documents shall be enclosed with the Request for Intervention.

5. The intervening third party may make a claim against any other party, subject to the limitations set out in Article 23.8 of the Rules.

## **Article 12. - Jurisdiction of the Arbitral Tribunal**

1. The Arbitral Tribunal shall rule on all disputes in connection with Articles 9 to 11 of the Rules, including disputes as to its own jurisdiction.
2. Any decisions of the Appointments Committee or the President as to the appointment or the acceptance of the members of the Arbitral Tribunal shall not prejudice the above-stated power to determine jurisdiction.

## Article 13. - Consolidation

1. When one or more contracts containing an arbitration agreement providing for the application of the Rules give rise to separate arbitrations, which are related or indivisible, the Appointments Committee or the President may order their consolidation.

This decision is taken either, prior to any other plea, at the request of the most diligent party, or, at the request of the Arbitral Tribunals or any one of them.

In any event no decision is taken without the parties and the Arbitral Tribunal or, as the case may be, the Arbitral Tribunals being invited to present their written observations within the time limit determined by the secretariat.

2. The application for consolidation shall be granted when it is presented by all the parties and they have also agreed on the manner in which the consolidation shall occur.

If this is not the case, the Appointments Committee or the President may grant the application for consolidation, after having considered, *inter alia*:

- a) whether the parties have not excluded consolidation in the arbitration agreement;
- b) whether the claims made in the separate arbitrations have been made pursuant to the same arbitration agreement;
- c) or, where the claims have been made pursuant to more than one arbitration agreement, whether they are compatible and whether the proceedings involve the same parties and concern disputes arising from the same legal relationship.

The Appointments Committee or the President shall take account, *inter alia* :

- a) of the progress made in each of the arbitrations and, *inter alia*, of the fact that one or more arbitrators have been appointed or confirmed in more than one of the arbitrations and, as the case may be, of the fact that the persons appointed or confirmed are the same;
- b) of the place of arbitration provided for in the arbitration agreements.

In coming to its decision the Appointments Committee or the President shall have regard to Article 15.

3. Except if agreed otherwise by the parties with regard to the principle of consolidation and the manner in which it shall occur, the Appointments Committee or the President may not order consolidation of arbitrations in which a decision has already been rendered with regard to preliminary measures, admissibility or as to the merits of a claim.

## **THE ARBITRAL TRIBUNAL**

### **Article 14. - 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. Prior to his appointment or confirmation the arbitrator 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 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.
3. 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 2 which may arise during the arbitration.
4. 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.

5. By accepting to serve, the arbitrator undertakes to carry out his duties until the end of his appointment in accordance with these Rules.

## **Article 15. - Appointment of Arbitrators**

1. The Appointments Committee or the President shall appoint or confirm the nomination of the arbitrators in accordance with the following rules. It shall take account, *inter alia*, of the availability, the qualifications of the arbitrator and his ability to conduct the arbitration in accordance with these Rules.
2. Where the parties have agreed to settle their dispute through a sole arbitrator, they may nominate him by mutual consent, subject to confirmation by the Appointments Committee or the President.

Should the parties fail to agree within one month of the notification of the Request for Arbitration to Respondent, or within such additional time as may be allowed by the secretariat, the sole arbitrator shall be automatically appointed by the Appointments Committee or by the President.

Where the Appointments Committee or the President refuses to confirm the nomination of the arbitrator, it or he shall proceed with the replacement within one month of the notification of this refusal to the parties.

3. When three arbitrators are foreseen, each party shall nominate its arbitrator in the Request for Arbitration or in the Answer to the Request, subject to the confirmation of the Appointments Committee or the President. Where a party refrains from nominating its arbitrator or if the latter is not confirmed, the Appointments Committee or the President shall automatically appoint the arbitrator.

The third arbitrator, who will act by right as chair of the Arbitral Tribunal, shall be appointed by the Appointments Committee or by the President, unless the parties have agreed upon another procedure for such appointment, in which case the appointment shall be subject to confirmation by the Appointment Committee or the President. Should such procedure not result in an appointment within the time limit fixed by the parties or the secretariat, the third arbitrator shall be automatically appointed by the Appointments Committee or the President.

4. Where the parties have not agreed upon the number of arbitrators, the dispute shall be settled by a sole arbitrator.

However, at the request of one the parties or on its or his own motion, the Appointments Committee or the President may decide that the case shall be heard by a Tribunal of three arbitrators.

In this case, Claimant shall nominate an arbitrator within a period of fifteen days from the receipt of the notification of the decision of the Appointments Committee or the President, and Respondent shall nominate an arbitrator within a period of fifteen days from the receipt of the notification of the nomination made by Claimant.

5. Where there are multiple parties and where the dispute is referred to three arbitrators, the multiple Claimants, jointly, and the multiple Respondents, jointly, shall each nominate one arbitrator for confirmation pursuant to the provisions of the present article.

In the absence of such a joint nomination and where all parties are unable to agree on a method for the constitution of the Arbitral Tribunal, the Appointments Committee or the President shall appoint each member of the Arbitral Tribunal and shall designate one of them to act as chair.

6. Where three arbitrators are foreseen and a Request for Intervention has been addressed to the secretariat in accordance with Article 11.3, before the Appointments Committee or the President has appointed or confirmed each of the members of the Arbitral Tribunal the intervening third party may nominate an arbitrator jointly with the Claimant(s) or with the Respondent(s).

Where there is a sole arbitrator and a Request for Intervention has been addressed to the secretariat before the Appointments Committee or the President has appointed or confirmed the sole arbitrator, the Appointments Committee or the President appoints the sole arbitrator taking into account the Request for Intervention.

7. Where the parties to the proceedings have agreed that a Request for Intervention may be made after the Appointments Committee or the President has appointed or confirmed the members of the Arbitral Tribunal, the Appointments Committee or the President has the choice of either confirming the nominations and confirmations that have occurred or of terminating the appointments of the members of the Arbitral Tribunal that have been previously

nominated or confirmed and then appointing the new members of the Arbitral Tribunal and appointing one of them as chair. In such event the Appointments Committee or the President is free to determine the number of arbitrators and to appoint any person they may choose.

8. When, pursuant to Article 13.1, the Request for consolidation is granted the Appointments Committee or the President appoints each of the members of the Arbitral Tribunal and appoints one of them as chair.

#### **Article 16. - Challenge of Arbitrators**

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, the other parties and the members of the Arbitral Tribunal, as the case may be, to present their written observations within a time period fixed by the secretariat. These observations shall be communicated to the parties and to the arbitrators. 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 17. - Replacement of Arbitrators**

1. In the event of an arbitrator's death, challenge, accepted withdrawal, 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 concerned, the parties and any other members of the Arbitral Tribunal, as the case may be, to present their observations in writing to the secretariat within the time limit allotted by the latter. Such observations shall be communicated to the parties and to the arbitrators.

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 present their observations, the Arbitral Tribunal shall determine if, and to what extent, prior proceedings shall be repeated.

## **THE ARBITRAL PROCEEDINGS**

### **Article 18. - Transmission of the File to the Arbitral Tribunal**

Provided that the advance on arbitration costs set out in Article 35 has been fully paid, the secretariat shall transmit the file to the Arbitral Tribunal as soon as the latter has been constituted.

### **Article 19. - 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 20. - 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 21. - 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 22. - Terms of Reference and Procedural Timetable**

1. Prior to the examination of the file, the Arbitral Tribunal shall, on the basis of documents received or in the presence of the parties and on the basis of their latest statements, draw-up a document defining its Terms of Reference.

The Terms of Reference shall contain the following information:

- a) the name, first name, corporate name, function, address, telephone and fax numbers and e-mail address of each of the parties and of any person(s) representing any party in the arbitration as well as, if applicable, the VAT number of each of the parties;
- b) the addresses of the parties to which notifications or communications arising in the course of the arbitration may be validly made;

- c) a succinct recital of the circumstances of the case;
  - d) a statement of the parties' claims with an indication, to the extent possible, of the amounts claimed or counterclaimed;
  - e) unless the Arbitral Tribunal deems it to be inappropriate, a determination of the issues that are in dispute;
  - f) the full names, first names, descriptions and addresses of each member of the Arbitral Tribunal;
  - g) the place of the arbitration;
  - h) any other particulars that the Arbitral Tribunal may deem to be useful.
2. The Terms of Reference must be signed by the parties and the members of the Arbitral Tribunal. The Arbitral Tribunal shall send these terms of reference to the secretariat within two months of the transmission of the file to the Arbitral Tribunal. This time limit may be extended pursuant to a reasoned request of the Arbitral Tribunal or on its own motion by the secretariat.

If one of the parties refuses to take part in the drawing up of the Terms of Reference or to sign them, in spite of being bound by a CEPANI arbitration agreement, the proceedings shall continue after the time limit granted by the secretariat to the Arbitral Tribunal for the obtaining of the missing signature has expired. The Arbitral Award following the refusal of a party to sign the Terms of Reference or to participate in the arbitration shall be deemed to conform to rules of due process.

3. When drawing up the Terms of Reference, or as soon as possible thereafter, the Arbitral Tribunal, after having consulted the parties, shall establish in a separate document a procedural timetable that it intends to follow for the conduct of the arbitration and shall communicate same to the parties as well as to the secretariat. Any subsequent modifications of the procedural timetable shall be communicated to the parties as well as to the secretariat.
4. The provisional procedural timetable may be drawn-up at any conference with the parties organized by the Arbitral Tribunal,

either of its own motion or at the request of any party. The purpose of the conference shall be to consult with the parties on the procedural measures required in accordance with Article 23 as well as on any other measure capable of facilitating the management of the proceedings. The conference may be organized via any means of communication.

5. The Arbitral Tribunal shall have the power to decide on an *ex aequo* basis only if the parties have authorised it to do so. In such event, the Arbitral Tribunal shall nevertheless abide by these Rules.

### **Article 23. - 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. At the request of the parties, any 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 conform to rules of due process.

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 of, or the ruling on, the original claim, or that they are beyond the limits of the Terms of Reference. It may also consider any other relevant circumstances.

#### **Article 24. - Closing of the Proceedings**

1. As soon as possible after the last hearing or the filing of the last admissible documents the Arbitral Tribunal shall declare the proceedings closed.
2. If it deems it necessary, the Arbitral Tribunal, at any time prior to the rendering of the Award, may decide, on its own motion or at the request of any party, to re-open the proceedings.

#### **Article 25. - 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 26. - Interim and Conservatory Measures Prior to the Constitution of the Arbitral Tribunal**

1. Except if the parties have agreed otherwise, each party may request interim and conservatory measures which cannot await the constitution of the Arbitral Tribunal. The Request is made in the agreed language or, in the absence of same, in the language of the arbitration agreement.
2. The party requesting the interim and conservatory measures shall send a copy of the Request to the secretariat.

3. The Request for interim and conservatory measures includes, *inter alia*, the following information :
  - a) name, first name, business name, function, address, telephone and fax numbers, e-mail address and VAT-number, if any, of each of the parties;
  - b) name, first name, business name, function, address, telephone and fax numbers, e-mail address of the person or persons representing the applicant;
  - c) a succinct recital of the nature and circumstances of the dispute giving rise to the application;
  - d) a statement of the relief sought,
  - e) the reasons for which the applicant requests the interim and conservatory measures which may not await the constitution of the Arbitral Tribunal;
  - f) information as to the place and the language of the arbitration as well as to the applicable rules of law;
  - g) all relevant agreements and all other useful documents and in any event the arbitration agreement;
  - h) proof of the payment of the procedural expenses provided for in paragraph 11 of the present Article.
4. The Appointments Committee or the President appoints an arbitrator who shall provisionally decide on the measures urgently requested. The said appointment shall take place in principle within two working days of the receipt of the request by the secretariat. Immediately upon his appointment, the arbitrator shall receive the file from the secretariat. The parties shall be informed and as of such moment shall communicate directly with the arbitrator, with copy to the other party and to the secretariat.
5. The arbitrator deciding on the interim and conservatory measures must be independent and remain so throughout the proceedings. He must also be impartial and remain so. For this purpose, he shall sign a declaration of independence, acceptance and availability.

6. The arbitrator deciding on the interim and conservatory measures may not be appointed as arbitrator in an arbitration which is related to the dispute at the origin of the Request.
7. A challenge may be made against an arbitrator deciding on the interim and conservatory measures.

In order not to be inadmissible as out of time, the challenge of the arbitrator deciding on the interim and conservatory measures must be sent within three days, either of receipt of the notification of the appointment of the arbitrator deciding on provisional measures by the party making the challenge or, of the date at which the said party was informed of the facts and circumstances that it relies on in support of its challenge if said facts and circumstances occur after the receipt of the above mentioned notification.

The secretariat advises the arbitrator deciding on the interim and conservatory measures and the other party of the time limit for the filing of their observations.

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 in principle within three working days of its receipt of the file. The Challenge Committee shall decide on the challenge of an arbitrator without any recourse. The reasons for the decision shall not be communicated.

8. The arbitrator deciding on the interim and conservatory measures shall draw-up a procedural calendar, in principle within three working days of receipt of the file. He shall transmit to the secretariat a copy of all his written communications with the parties.
9. The arbitrator deciding on the interim and conservatory measures organizes the proceedings in the manner which he deems to be the most appropriate. In any event he conducts the proceedings in an impartial manner and ensures that each party has sufficient opportunity to present its case.
10. In principle, the arbitrator deciding on the interim and conservatory measures renders his decision at the latest within fifteen days of his receipt of the file. The decision shall be in writing and shall include the reasoning upon which the decision is based. The decision shall

be in the form of a reasoned Order or, if the arbitrator deciding on provisional measures deems it appropriate, in the form of an Award. The arbitrator sends his decision to the parties, with copy to the secretariat, via any means of communication which is authorized by Article 8.2.

11. The applicant for interim and conservatory measures in accordance with Article 26 shall be required to pay a fixed sum to cover the fees of the arbitrator deciding on the provisional measures as well as the administrative expenses. The sum in question is fixed in accordance with point 7 of Schedule I.

The Request for Interim and Conservatory measures is only transmitted to the Appointments Committee or the President when the secretariat has received the above-mentioned amount.

If the proceedings do not take place in accordance with the present article or if the proceedings are terminated before any decision is rendered the secretariat determines the amount, if any, to be reimbursed to the applicant.

In any event, the amount covering the administrative expenses fixed in accordance with point 7 of Schedule I is not refundable.

### **Article 27. - Interim and Conservatory Measures After the Constitution of the Arbitral Tribunal**

1. Provided that the advance to cover arbitration costs in accordance with Article 35 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 28. - Time Limit for the Rendering of the Arbitral Award**

1. The Arbitral Tribunal shall render the Award within six months of the date of the Terms of Reference mentioned in Article 22.
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 29. - Making of the Award**

1. Where there is more than one arbitrator, the Award shall be made by a majority decision. If no majority can be reached, the chair of the Arbitral Tribunal shall have the deciding vote.
2. The Award shall state the reasons upon which it is based.
3. The Award shall be deemed to be made at the place of the arbitration and on the date stated therein.

### **Article 30. - 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 31. - 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 32. - 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 33. - 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 3.1.
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 3.1.

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 28, 29 and 31 shall apply *mutatis mutandis*.
6. When a jurisdiction remits an Award to the Arbitral Tribunal the provisions of Articles 28, 29 and 31 as well as the present Article 33 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 34. - Nature and Amount of the Arbitration Costs - Parties' Costs**

1. The arbitration costs shall include the fees and expenses of the arbitrators, as well as the administrative expenses of CEPANI. 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 arbitration.
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 exceptional circumstances.
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 arbitration costs will be calculated.

5. The secretariat may adjust the amount of the arbitration 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 35. - Advance on Arbitration Costs**

1. The arbitration costs, as determined in accordance with Article 34 shall be paid to CEPANI prior to the transmittal 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 or a Request for Intervention is filed, the secretariat may, at the request of the parties or one of them, or on its own motion, fix separate advances on arbitration costs for the principal claim, the counterclaim and the Request for Intervention. 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 claim, counterclaim or Request for Intervention. 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 the advance on arbitration costs exceeds € 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 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 was 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 36. - Decisions on Arbitration Costs and Parties' Costs**

1. The arbitration costs shall be finally fixed by the secretariat.
2. The final Award shall decide which of the parties shall finally bear the arbitration costs, as definitively determined by the secretariat, 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 37. - 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 38. - 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.

## **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 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 Arbitrator 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 Arbitrator 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 Arbitrator 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 Arbitrator 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 Arbitrator**

The Appointments Committee or the President appoints or confirms the nomination of the Arbitrator 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 appointed, and after having invited the parties to comment, the Arbitrator 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 Arbitrator as soon as the latter has been constituted.

### **Article 15. - Proof of Authority**

At any time after the introduction of the arbitration, the Arbitrator 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 Arbitrator, due regard being given to the circumstances of the case and, in particular, to the language of the contract.
2. The Arbitrator 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 Arbitrator may decide to hold its hearings and meetings at any other location that it considers appropriate.
3. The Arbitrator may deliberate at any place that it considers appropriate.

### **Article 18. - Examination of the case**

1. In the conduct of the proceedings the Arbitrator 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 Arbitrator 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 Arbitrator 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 Arbitrator 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 Arbitrator, 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 Arbitrator 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 Arbitrator 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 Arbitrator 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 Arbitrator, 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 Arbitrator 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 Arbitrator and to the secretariat.

## **THE ARBITRAL AWARD**

### **Article 21. - Time limit for the Arbitral Award**

1. The Arbitrator 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 Arbitrator, 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 Arbitrator, 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 Arbitrator 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 Arbitrator 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 22 and 24 shall apply *mutatis mutandis*.
6. When a jurisdiction remits an Award to the Arbitrator the provisions of Articles 22 and 24 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 Arbitrator 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 Arbitrator 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.





## **SCHEDULES**

## SCHEDULE I : SCALE OF COSTS FOR ARBITRATION

1. The arbitration costs shall include the fees and expenses of the arbitrators as well as the administrative expenses of the secretariat.

1.1 The fees and costs of the arbitrators shall be determined by the secretariat depending on the amount in dispute and within the limits mentioned hereinafter. This scale applies to all proceedings introduced as from 1 January 2015 whichever version of the Rules is applicable to the proceedings.

Sum in dispute (in euro €)			Fees	
			Minimum	Maximum
from	0,00 to	25.000,00	1.500,00	2.500,00
from	25.000,00 to	50.000,00	2.500,00 + 1,00% otae 25.000	2.750,00 + 5,00% otae 25.000
from	50.001,00 to	100.000,00	2.750,00 + 3,00% otae 50.000	3.250,00 + 4,00% otae 50.000
from	100.001,00 to	500.000,00	3.250,00 + 1,50% otae 100.000	6.000,00 + 1,50% otae 100.000
from	500.001,00 to	1.000.000,00	10.000,00 + 0,75% otae 500.000	12.500,00 + 1,50% otae 500.000
from	1.000.001,00 to	5.000.000,00	17.000,00 + 0,70% otae 1.000.000	20.000,00 + 0,75% otae 1.000.000
from	5.000.001,00 to	10.000.000,00	45.000,00 + 0,30% otae 5.000.000	60.000,00 + 0,30% otae 5.000.000
from	10.000.001,00 to	50.000.000,00	70.000,00 + 0,025% otae 10.000.000	80.000,00 + 0,025% otae 10.000.000
	above	50.000.000,00	90.000,00 + 0,012% otae 50.000.000	140.000,00 + 0,012% otae 50.000.000

*otae = of the amount exceeding*

2. Each Request for Arbitration pursuant to the Rules must be accompanied by an advance payment on administrative expenses. Such payment is non-refundable.

For arbitrations where the amount of the principal claim does not exceed an amount of € 25.000,00, a non-refundable registration fee of € 750,00 (VAT excl.) is payable.

For arbitrations where the amount of the principal claim is between € 25.000,00 and € 250.000,00 a non-refundable registration fee of € 1.250,00 (VAT excl.) is payable.

For arbitrations where the amount of the principal claim exceeds an amount of € 250.000,00, a non-refundable registration fee of

€ 1.750,00 (VAT excl.) is payable.

The administrative expenses of CEPANI are fixed on a lump sum basis at 10 % of the fees and expenses of the arbitrators as determined hereinabove (scale). They are subject to VAT and are never less than the registration costs mentioned hereinabove.

3. When the arbitrator is subject to VAT, he shall so inform the secretariat, which will charge the parties with the VAT owed on the arbitrator's fees.
4. 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 Arbitration Costs, should this be deemed necessary due to the exceptional circumstances of the case.
5. When a tribunal of three arbitrators has been appointed, the above rates of costs and fees shall be multiplied by 3.  
When the arbitral tribunal is composed of more than three arbitrators, the secretariat of CEPANI shall determine the arbitration costs accordingly.
6. Prior to any technical expertise ordered by the Arbitral Tribunal, the parties or one of them shall pay an advance, the amount of which shall be determined by the arbitral tribunal and cover the probable costs and fees of the expert(s). The fees and final costs of the expert shall be determined by the Arbitral Tribunal.

The award shall allocate the technical expert appraisal costs between the parties in whatever proportion is decided.

7. The party requesting the interim and conservatory measures shall pay an amount of € 15.000, including € 3.000 for CEPANI's administrative expenses.
8. At any time in the proceedings, the amount mentioned in point may be increased by the CEPANI secretariat, taking into account, *inter alia*, the nature of the case as well as the nature and the volume of work performed by the arbitrator and the secretariat. The request for interim and conservatory measures is deemed to have been withdrawn if the applicant does not pay the required additional fee within the time limit fixed by the secretariat. .

9. When the parties refer to the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) and appoint the Belgian Centre for Arbitration and Mediation (CEPANI) as the appointing authority, the CEPANI administrative expenses for acting as an appointing authority shall be € 1.500, which amount is non-refundable. No application will be examined before payment of the required amount. When it is requested to render additional services, CEPANI, acting on its own discretion, may determine the amount of administrative expenses, the amount of which shall be proportionate to the services rendered and shall not exceed a ceiling of € 6.000. The administrative expenses are payable by the Parties in equal parts.
10. When the parties refer to CEPANI to appoint an arbitrator in the context of an *ad hoc* arbitration proceeding, the CEPANI administrative expenses for acting as an appointing authority amount to € 1.500, which amount is non-refundable. No application will be examined before payment of the required amount. When it is requested to render additional services, CEPANI, acting on its own discretion, may determine the amount of administrative expenses, the amount of which shall be proportionate to the services rendered and shall not exceed a ceiling of € 6.000. The administrative expenses are payable by the Parties in equal parts.

## **SCHEDULE II : PARTIES' COSTS**

### **Recommendations concerning the parties' costs**

- 1) This recommendation concerns the reimbursement of all the reasonable costs borne by a party for the defence of its interests, such as the costs of legal assistance and representation, costs related to the production of evidence by experts or by witness testimony as well as internal costs. These costs also include the travelling and hotel costs of counsel, experts and witnesses.
- 2) Parties are free to agree on the extent to which the parties' costs are reimbursed as well as the modalities of the reimbursement of these costs by the Arbitral Tribunal. Parties are free to determine an upper maximum limit for the reimbursement of these costs.
- 3) The arbitrators shall draw the parties' attention to the possibility they have of making an agreement on parties' costs.
- 4) In its Award relating to parties' costs the Arbitral Tribunal may take account of the circumstances of the case, the financial importance and the degree of difficulty of the case, the manner in which the parties have cooperated in handling the case, the relevance of the arguments presented and the degree to which the claim has been successful.
- 5) Parties' costs must be duly evidenced taking into account professional rules as well as professional secrecy.
- 6) The Arbitral Tribunal may not decide on a party's request for the reimbursement of costs without offering the other party(ies) the possibility of contesting the costs.
- 7) Article 1022 of the Belgian Judicial Code shall not apply unless otherwise agreed by the parties.
- 8) The Arbitral tribunal shall rule on the parties' costs at the latest in its Final Award and shall state the reasons for its decision.

### **SCHEDULE III : RULES OF GOOD CONDUCT FOR PROCEEDINGS ORGANIZED BY CEPANI**

1. The President and Secretary-general of CEPANI, their associates and employees, shall not participate in any proceedings conducted under the CEPANI rules, either as an arbitrator or counsel.
2. In accepting his appointment by CEPANI, the arbitrator shall agree to apply strictly the CEPANI rules and to collaborate loyally with the secretariat. He shall regularly inform the secretariat of his work in progress.
3. The prospective arbitrator shall accept his appointment only if he is independent of the parties and of their counsel. If any event should subsequently occur that is likely to call into question this independence in his own mind or in the minds of the parties, he shall immediately inform the secretariat which will then inform the parties. After having considered the parties' comments, the Challenge Committee shall decide on his possible replacement. The Challenge Committee shall decide without any recourse on the challenge of an arbitrator. The reasons for the decision shall not be communicated.
4. An arbitrator nominated by one of the parties shall neither represent nor act as that party's agent.
5. The arbitrator appointed upon the proposal of a party undertakes, as from his appointment, to have no further relation with that party, nor with its counsel, regarding the dispute which is the object of the arbitration. Any contact with this party shall take place through the chairman of the Arbitral Tribunal or with his explicit permission.
6. In the course of the arbitration proceedings, the arbitrator shall, in all circumstances, show the utmost impartiality, and shall refrain from any deeds or words that might be perceived by a party as bias, especially when asking questions at the hearing.
7. If the circumstances so permit, the arbitrator may, with due regard to paragraph 6 here above, ask the parties to seek an amicable settlement and, with the explicit permission of the parties and of the secretariat, to suspend the proceedings for whatever period of time is necessary.

8. By accepting his appointment by CEPANI, the arbitrator undertakes to ensure that the Award is rendered as diligently as possible. This means, namely, that he shall request an extension of the time limit provided by the CEPANI Rules only if necessary or with the explicit agreement of the parties.
9. The arbitrator shall obey the rules of strict confidentiality in each case referred to him by CEPANI.
10. Awards may only be published anonymously and with the explicit approval of the parties. The secretariat shall be informed thereof beforehand. This rule applies to the arbitrators as well as to the parties and their counsel.
11. The signature of the Award by a member of an Arbitral Tribunal of arbitrators does not necessarily imply that that arbitrator agrees with the content of the award.

# **SCHEDULE IV : BELGIAN JUDICIAL CODE PROVISIONS RELATING TO ARBITRATION**

## **CHAPTER 6 - ARBITRATION**

### **Chapter 1 - General provision**

**Art. 1676.** § 1. Any pecuniary claim may be submitted to arbitration. Non-pecuniary claims with regard to which a settlement agreement may be made may also be submitted to arbitration.

§ 2. Whosoever has the capacity or is empowered to make a settlement may conclude an arbitration agreement.

§ 3. Without prejudice to specific laws, public legal entities may only enter into an arbitration agreement if the object thereof is to resolve disputes relating to an agreement. The conditions that apply to the entering into of the agreement, which constitutes the object of the arbitration, also apply to the entering into of the arbitration agreement. Moreover, public legal entities may enter into arbitration agreements on all matters defined by law or by royal decree decided by the Council of Ministers. The decree may also set forth the conditions and rules to be respected for the entering into of such an agreement.

§ 4. The above-mentioned provisions shall apply without prejudice to the exceptions provided by law.

§ 5. Without prejudice to the exceptions provided by law, an arbitration agreement entered into prior to any dispute that falls under the jurisdiction of the Labour Court pursuant to articles 578 through 583, shall be automatically null and void.

§ 6. Articles 5 through 14 of the Law of 16 July 2004 on private international law also apply to arbitration and the Belgian courts also have jurisdiction where the place of arbitration is located in Belgium as defined in article 1701, § 1, when the proceedings are introduced. Where the place of arbitration has not been determined, the Belgian courts have jurisdiction to take the measures set out in articles 1682 and 1683.



§ 7. Unless otherwise agreed by the parties, Part 6 of this Code shall apply where the place of arbitration as defined in article 1701, § 1, is located in Belgium.

§ 8. By way of derogation from § 7, the provisions of articles 1682, 1683, 1696 through 1698, 1708 and 1719 through 1722 shall apply irrespective of the place of arbitration and notwithstanding any clause to the contrary.

**Art. 1677**§ 1. In this Part of the Code,

1. the words “arbitral tribunal” mean a sole arbitrator or a panel of arbitrators;

2. the word “communication” means the transmission of a written document between the parties, between the parties and the arbitrators or between the parties and third parties organising the arbitration, by means of a method of communication or in a manner that provides proof of sending.

§ 2. Where a provision of this Part, with the exception of article 1710, leaves the parties free to determine an issue referred to herein, this freedom includes the right of the parties to authorise a third party to make that determination.

**Art. 1678.** § 1. Unless otherwise agreed by the parties, the communication is delivered or sent to the addressee, either to his domicile, his residence or his email address, or, in the case of a legal entity, to its registered office, main place of business or email address.

If none of these can be found after making reasonable inquiries, a communication is deemed to have been received if it is sent to the addressee’s last-known domicile or residence, or, in the case of a legal entity, to its last-known registered office, its last-known main place of business or its last-known email address.

§ 2. Unless otherwise agreed by the parties, periods starting to run with regard to the addressee from the communication date are calculated as follows:

- a) where the communication is made by hand in return for a dated acknowledgement of receipt, from the following day;
- b) where the communication is made by email or other method of communication that provides proof of sending, from the first day after the date indicated on the acknowledgement of receipt;
- c) where the communication is made by registered post with

acknowledgement of receipt, from the first day following the date on which the letter was delivered in person to the addressee at his domicile or residence, or to its registered office or main place of business or, where applicable, to the last-known domicile or residence or to the last-known registered office or main place of business;

d) where the communication is made by registered letter, from the third working day after the date on which the letter was delivered to the postal service, unless the addressee provides proof to the contrary.

§ 3. The communication is deemed to have been made to the addressee on the date of the acknowledgement of receipt.

§ 4. This article does not apply to communications in court proceedings.

**Art. 1679.** A party that, knowingly and for no legitimate reason refrains from raising, in due time, an irregularity before the arbitral tribunal is deemed to have waived its right to assert such irregularity.

**Art. 1680.** , § 1. The President of the Court of First Instance, ruling as in summary proceedings, on a unilateral request by the most diligent party, shall appoint the arbitrator in accordance with article 1685, § 3 and § 4.

The President of the Court of First Instance, ruling as in summary proceedings, following the issue of a writ of summons, shall replace the arbitrator in accordance with article 1689, § 2.

The decision to appoint or replace the arbitrator shall not be subject to any recourse.

However, this decision may be appealed where the President of the Court of First Instance rules that there are no grounds for an appointment.

§ 2. The President of the Court of First Instance, ruling as in summary proceedings, following the issue of a writ of summons, shall rule on the withdrawal of an arbitrator in accordance with article 1685, §7, challenge of an arbitrator in accordance with article 1687, § 2, and on the failure or impossibility to act of an arbitrator in the case provided for in article 1688, § 2. This decision shall not be subject to any recourse.

§ 3. The President of the Court of First Instance, ruling as in summary proceedings, may set a time limit for an arbitrator to render his award as set out in article 1713, § 2. This decision shall not be subject to any recourse.

§ 4. The President of the Court of First Instance, ruling as in summary proceedings, shall take all necessary measures for the taking of evidence in accordance with article 1709. This decision shall not be subject to any recourse.

§ 5. The Court of First Instance shall have jurisdiction except in the cases mentioned in § 1 through § 4. Its decisions, following the issue of a writ of summons, are final and not subject to a recourse.

§ 6. Subject to article 1720, the claims referred to in this article fall under the jurisdiction of the Court whose seat is that of the Court of Appeal in whose jurisdiction the place of arbitration is fixed.

Where this place is not fixed, the Court having jurisdiction shall be the Court whose seat is that of the Court of Appeal in whose jurisdiction is situated the Court that would have had jurisdiction over the matter, had the matter not been submitted to arbitration.

## **Chapter II. Arbitration agreement**

**Art. 1681.** An arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

**Art. 1682.** § 1. The Court before which is brought a dispute that is also the object of an arbitration agreement shall declare itself without jurisdiction at the request of a party, unless the arbitration agreement is invalid with regard to this dispute or has ceased to exist. The plea must be raised before any other plea or defence, failing which it shall be inadmissible.

§ 2. Where an action referred to in § 1 has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made “.

**Art. 1683.** It is not incompatible with an arbitration agreement for a request to be made to a court for an interim or conservatory measure before or during arbitral proceedings and for a court to grant such measure, nor shall any such request imply a waiver of the arbitration agreement.

### Chapter III. Composition of arbitral tribunal

**Art. 1684.** §1. The arbitral tribunal must be composed of an odd number of arbitrators. A sole arbitrator is allowed.

§ 2. Should the arbitration agreement provide for an even number of arbitrators, an additional arbitrator shall be appointed.

§ 3. Where the parties have not agreed on the number of arbitrators, the arbitral tribunal shall be composed of three arbitrators.

**Art. 1685.** § 1. No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

§ 2. The parties are free to agree on a procedure for appointing the arbitrator or arbitrators, subject to the provisions of § 3 and § 4 of this article and the general requirement of independence and impartiality of the arbitrator or of the arbitrators.

§ 3. Failing such determination;

a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of the appointment of the second arbitrator, the appointment shall be made by the President of the Court of First Instance, ruling on the request of the most diligent party, in accordance with article 1680, § 1;

b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the selection of the arbitrator, he shall be appointed by the President of the Court of First Instance, ruling on the request of the most diligent party, in accordance with article 1680, § 1;

c) in an arbitration with more than three arbitrators, if the parties are unable to agree on the composition of the arbitral tribunal, it shall be appointed by the President of the Court of First Instance, ruling on the request of the most diligent party, in accordance with article 1680, § 1;

§ 4. Where, under an appointment procedure agreed upon by the parties,

a) a party fails to act as required under such procedure, or

b) the parties, or two arbitrators, are unable to reach an agreement under such procedure, or a third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the President of the Court of First Instance ruling in

accordance with article 1680, § 1 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

§ 5. The President of the Court of First Instance, when appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

§ 6. The appointment of an arbitrator, once notified, may not be withdrawn.

§ 7. Once he has accepted his mission, an arbitrator may not withdraw without the consent of the parties or without being so authorised by the President of the Court of First Instance ruling in accordance with article 1680, § 2.

**Art. 1686.** §1. When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his independence or impartiality. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall disclose without delay any such circumstances to the parties

§ 2. An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or if he does not have the qualifications agreed to by the parties. A party may challenge an arbitrator appointed by the said party, or in whose appointment it participated, only for reasons of which it becomes aware after the appointment has been made.

**Art. 1687.** , §1. The parties are free to agree on a procedure for challenging an arbitrator.

§ 2. Failing such agreement,

a) a party who intends to challenge an arbitrator shall send a written statement of the reasons for the challenge to the relevant arbitrator and, where applicable, to the other arbitrators if the tribunal has more than one arbitrator, and to the opposing party. This statement must be sent within fifteen days after the challenging party has become aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 1686, § 2, failing which the statement shall be inadmissible.

b) Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge within ten days of the challenging statement being sent, the challenging party shall summon the arbitrator and the other parties within ten days, failing which the challenge shall be inadmissible, to appear before the President of the Court of First Instance ruling in accordance with article 1680, § 2. Pending a ruling by the President of the Court of First Instance, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

**Art. 1688.** §1. Unless otherwise agreed by the parties, if an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office in the conditions foreseen in article 1685, § 7, or if the parties agree on the termination of the mandate.

§ 2. Otherwise, if a controversy remains concerning any of these grounds, the most diligent party shall summon the other parties and the arbitrator referred to in § 1 to appear before the President of the Court of First Instance who shall rule in accordance with article 1680, § 2.

§ 3. If, under this article or under article 1687, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in article 1687 or in this article.

**Art. 1689.** §1. In all cases where the arbitrator's mandate is terminated before the final award is made, a substitute arbitrator shall be appointed. This appointment shall be made in accordance with the rules that were applicable to the appointment of the arbitrator being replaced unless otherwise agreed by the parties.

§ 2. If the arbitrator is not replaced in accordance with § 1, either party may refer the matter to the President of the Court of First Instance who will rule in accordance with article 1680, §1.

§ 3. Once the substitute arbitrator has been appointed, the arbitrators, after hearing the parties, shall decide if there are grounds to repeat the arbitral proceedings entirely or in part; they may not revise any partial final awards already made.

## Chapter IV. Jurisdiction of arbitral tribunal

**Art. 1690.** §1. The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration agreement.

§ 2. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the communication of the first written pleadings by the asserting party, within a period and in a manner in accordance with article 1704.

A party is not precluded from raising such a plea by the fact that he has appointed or participated in the appointment of an arbitrator.

A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

In either case, the arbitral tribunal may admit a later plea if it considers the delay justified.

§ 3. The arbitral tribunal may rule on the pleas mentioned in § 2 either as a preliminary question or in its award on the merits.

§ 4. The arbitral tribunal's decision that it has jurisdiction may only be contested together with the award on the merits and in the course of the same procedure.

At the request of one of the parties, the Court of First Instance may also rule on the merits of the arbitral tribunal's decision that it lacks jurisdiction.

**Art. 1691.** Without prejudice to the powers accorded to the courts and tribunals by virtue of article 1683, and unless otherwise agreed by the parties, the arbitral tribunal may order any interim or conservatory measures it deems necessary.

However, the arbitral tribunal may not authorise attachment orders.

**Art. 1692.** At the request of one of the parties, the arbitral tribunal may amend, suspend or terminate an interim or conservatory measure.

**Art. 1693.** The arbitral tribunal may require the party requesting an interim or conservatory order to provide appropriate security.

**Art. 1694.** The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.

**Art. 1695.** The party requesting an interim or conservatory measure shall be liable for any costs and damages caused by the measure to another party if the arbitral tribunal later determines that, in the circumstances, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

**Art. 1696.** , §1. An interim or protective measure issued by an arbitral tribunal shall be recognised as binding and, unless otherwise provided by the arbitral tribunal, enforced by the Court of First Instance, irrespective of the country in which it was issued, subject to the provisions of article 1697.

§ 2. The party who is seeking or has obtained recognition or enforcement of an interim or conservatory measure shall promptly inform the sole arbitrator or the chairman of the arbitral tribunal of any termination, suspension or modification of that measure.

§ 3. The Court of First Instance where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of the respondent and of third parties.

**Art. 1697.** §1. Recognition or enforcement of an interim or conservatory measure may be refused only:

a) At the request of the party against whom it is invoked:

i) If such refusal is warranted on the grounds set forth in article 1721, §1(a), i., ii., iii., iv. or v.; or

ii) if the arbitral tribunal's decision with respect to the provision of security has not been complied with; or

iii) if the interim or conservatory measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under the law of which that interim measure was granted; or

b) if the Court of First Instance finds that any of the grounds set forth in article 1721, §1(b) apply to the recognition and enforcement of the interim or conservatory measure.



§ 2. Any determination made by the Court of First Instance on any ground in § 1 shall be effective only for the purposes of the application to recognise and enforce the interim or conservatory measure. The Court of First Instance where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim or conservatory measure.

**Art. 1698.** The Court ruling in summary proceedings shall have the same power of issuing an interim or conservatory measure in relation to arbitration proceedings, irrespective of whether they take place on Belgian territory, as it has in relation to court proceedings. The Court shall exercise such power in accordance with its own procedures taking into account the specific features of arbitration.

### **Chapter V. Conduct of arbitral proceedings**

**Art. 1699.** Notwithstanding any agreement to the contrary, the parties shall be treated with equality and each party shall be given a full opportunity of presenting his case, pleas in law and arguments in conformity with the principle of adversarial proceedings. The arbitral tribunal shall ensure that this requirement as well as the principle of fairness of the debates are respected.

**Art. 1700.** §1. The parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

§ 2. Failing such agreement, the arbitral tribunal may, subject to the provisions of Part 6 of this Code, determine the rules of procedure applicable to the arbitration in such manner as it considers appropriate.

§ 3. Unless otherwise agreed by the parties, the arbitral tribunal shall freely assess the admissibility and weight of the evidence.

§ 4. The arbitral tribunal shall set the necessary investigative measures unless the parties authorise it to entrust this task to one of its members. It may hear any person and such hearing shall be taken without oath. If a party holds a piece of evidence, the arbitral tribunal may enjoin it to disclose the evidence according to such terms as the arbitral tribunal shall decide and, if necessary, on pain of a penalty payment.

§ 5. With the exception of applications relating to authentic instruments, the arbitral tribunal shall have the power to rule on applications to verify the authenticity of documents and to rule on allegedly forged documents. For applications relating to authentic instruments, the arbitral tribunal shall leave it to the parties to refer the matter to the Court of First Instance within a given time limit.

In the circumstances referred to in § 2, the time limits of the arbitral proceedings are automatically suspended until such time as the arbitral tribunal has been informed by the most diligent party of the final court decision on the incident.

**Art. 1701.** §1. The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

If the place of arbitration has not been determined by the parties or the arbitrators, the place where the award is rendered is deemed to be the place of arbitration.

§ 2. Notwithstanding the provisions of § 1 and unless otherwise agreed by the parties, the arbitral tribunal, after consulting the parties, may hold its hearings and meetings at any place it deems appropriate.

**Art. 1702.** Unless otherwise agreed by the parties, the arbitral proceedings start on the on the date on which an arbitration application is received by the respondent, in accordance with article 1678, § 1(a).

**Art. 1703.** §1. The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any communication between the parties, any hearing and any award, decision or other communication by the arbitral tribunal.

§ 2. The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

**Art. 1704.** §1. Within the period of time and as agreed by the parties or determined by the arbitral tribunal, the parties shall develop all the pleas and arguments supporting their claim or defence as well as all facts in support thereof.

The parties may agree on, or the arbitral tribunal may order, the exchange of additional written pleadings between the parties as well as the terms for such exchange.

The parties shall submit with their written pleadings all documents that they wish to produce in evidence.

§ 2. Unless otherwise agreed by the parties, either party may amend or supplement its claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment, notably having regard to the delay in making same.

**Art. 1705.** §1. Unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

§ 2. The chairman of the arbitral tribunal shall set the schedule of the hearings and shall preside over them.

**Art. 1706.** Unless otherwise agreed by the parties, if, without showing sufficient cause,

a) the claimant fails to communicate his statement of claim in accordance with article 1704, § 1, the arbitral tribunal shall terminate the proceedings, without prejudice to the handling of the claims of another party.

b) the respondent fails to communicate his statement of defence in accordance with article 1704, § 1, the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

c) any party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

**Art. 1707.** §1. Unless otherwise agreed by the parties, the arbitral tribunal may

a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

§ 2. If a party so requests or if the arbitral tribunal considers it necessary, the expert shall participate in a hearing where the parties have the opportunity to put questions to him.

§ 3. § 2 applies to the technical experts appointed by the parties.

§ 4. An expert may be challenged on grounds outlined in article 1686 and according to the procedure set out in article 1687.

**Art. 1708.** With the approval of the arbitral tribunal, a party may apply to the Court of First Instance ruling as in summary proceedings to order all necessary measures for the taking of evidence in accordance with article 1680, § 4.

**Art. 1709.** § 1. Any interested third party may apply to the arbitral tribunal to join the proceedings. The request must be put to the arbitral tribunal in writing, and the tribunal shall communicate it to the parties.

§ 2. A party may call upon a third party to join the proceedings.

§ 3. In any event, the admissibility of such joinder requires an arbitration agreement between the third party and the parties involved in the arbitration. Moreover, such joinder is subject to the unanimous consent of the arbitral tribunal.

## **Chapter VI. Arbitral award and termination of proceedings**

**Art. 1710.** § 1. The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute.

Any designation of the law of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

§ 2. Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

§ 3. The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

§ 4. Irrespective of whether it decides on the basis of rules of law or *ex aequo et bono* or as *amiable compositeur*, the arbitral tribunal

shall decide in accordance with the terms of the contract if the dispute opposing the parties is contractual in nature and shall take into account the usages of the trade if the dispute is between commercial parties.

**Art. 1711.** §1. In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all of its members.

§ 2. Questions of procedure may be decided by the chairman of the arbitral tribunal if so authorised by the parties.

§ 3. The parties are also free to decide that the chairman's vote shall be decisive where no majority can be formed.

§ 4. Where an arbitrator refuses to participate in deliberations or in the voting on the arbitral award, the other arbitrators are free to decide without him, unless otherwise agreed by the parties. The parties shall be given advance notice of the intention to make an award without the arbitrator refusing to participate in the deliberations or in the vote.

**Art. 1712.** §1. If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties, shall record the settlement in an award on agreed terms, unless this violates public policy.

§ 2. An award on agreed terms shall be made in accordance with the provisions of article 1713 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

§ 3. The decision granting enforceability to the award becomes ineffective when the award on agreed terms is set aside.

**Art. 1713.** §1. The arbitral tribunal shall make a final decision or render interlocutory decisions by way of one or several awards.

§ 2. The parties may determine the time limit within which the arbitral tribunal must render its award, or the terms for setting such a time limit. Failing this, if the arbitral tribunal is late in rendering its award, and a period of six months has elapsed between the date on which the last arbitrator has been appointed, the President of the Court of First Instance, at the request of one of the parties, may impose a time limit on the arbitral tribunal in accordance with article 1680, § 3.

The mission of the arbitrators ends if the arbitral tribunal has not rendered its award at the expiry of this time limit.

§ 3. The award shall be made in writing and shall be signed by the arbitrator. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

§ 4. The award shall state the reasons upon which it is based.

§ 5. In addition to the decision itself, the award shall contain, *inter alia*:

- a) the names and domiciles of the arbitrators;
- a) the names and domiciles of the parties;
- c) the object of the dispute;
- d) the date on which the award is rendered;
- e) the place of arbitration determined in accordance with article 1701, § 1, and the place where the award is rendered.

§ 6. The final award shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties. Unless otherwise agreed by the parties, these costs shall include the fees and expenses of the arbitrators, the fees and expenses of the parties' counsel and representatives, the costs of services rendered by the instances in charge of the administration of the arbitration and all other expenses arising from the arbitral proceedings.

§ 7. The arbitral tribunal may order a party to pay a penalty. Articles 1385 bis through octies shall apply *mutatis mutandis*.

§ 8. Once the arbitral award has been rendered, a copy shall be sent, in accordance with article 1678, § 1, to each party by the sole arbitrator or by the chairman of the arbitral tribunal, who shall moreover ensure that each party receives an original copy if the method of communication retained in accordance with article 1678, § 1 did not entail the delivery of such an original. He shall file the original copy with the court clerk of the Court of First Instance, and shall notify the parties of this filing.

§ 9. The award shall have the same effect as a court decision in the relationship between the parties.

**Art. 1714.** §1. The arbitral proceedings are terminated by the signing of

the arbitral award which exhausts the jurisdiction of the arbitral tribunal or by a decision of the arbitral tribunal to terminate the proceedings in accordance with § 2.

§ 2. The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

- a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute;
- b) the parties agree on the termination of the proceedings.

§ 3. The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, the communication of the award and its filing, subject to the provisions of articles 1715 and 1717, § 6.

**Art. 1715.** §1. Within one month of receipt of the award, in accordance with article 1678, § 1, unless another period of time has been agreed upon by the parties.

- a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in calculation, any clerical or typographical errors or any errors of similar nature;
- b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within one month of receipt of the request. The interpretation shall form part of the award.

§ 2. The arbitral tribunal may correct any error of the type referred to in §1(a) on its own initiative within one month of the date of the award.

§ 3. Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within one month of receipt of the award in accordance with article 1678, § 1, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within two months, even if the time limits set out in article 1713, § 2 have expired.

§ 4. The arbitral tribunal may, if necessary, extend the period of time

within which it may make a correction, interpretation or an additional award under § 1 or § 3.

§ 5. Article 1713 shall apply to a correction or interpretation of the award or to an additional award.

§ 6. When the same arbitrators can no longer be reunited, the request for interpretation, correction or an additional award shall be submitted to the Court of First Instance.

§ 7. If the Court of First Instance remits an arbitral award by virtue of article 1717, § 6, article 1713 and this article shall apply *mutatis mutandis* to the award rendered in accordance with the decision to remit.

## **Chapter VII. Recourse against arbitral award**

**Art. 1716.** An appeal can only be made against an arbitral award if the parties have provided for that possibility in the arbitration agreement. Unless otherwise stipulated, the time limit for an appeal is one month as of the notification of the award, in accordance with article 1678, § 1.

**Art. 1717**§ 1. The application to set aside the award is admissible only if the award can no longer be contested before the arbitrators.

§ 2. The arbitral award may only be contested before the Court of First Instance, by means of a writ of summons, and it may be set aside solely for a cause mentioned in this article.

§ 3. The arbitral award may only be set aside if:

a) the party making the application furnishes proof that:

i) a party to the arbitration agreement referred to in article 1681 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of Belgium; or

ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; in this case, the award may not be set aside if it is established that the irregularity has had no effect on the arbitral award; or

iii) the award deals with a dispute not provided for in, or not falling within, the terms of the arbitration agreement, or contains decisions on



matters beyond the scope of the arbitration agreement, provided that, if the provisions of the award on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

iv) if the award is not reasoned; or

v) the composition of the arbitral tribunal or the arbitral proceedings were not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of Part 6 of this Code from which the parties cannot derogate, or, failing such agreement, was not in accordance with Part 6 of this Code; with the exception of an irregularity affecting the composition of the arbitral tribunal, such irregularities may however not give rise to a setting aside of the arbitral award if it is established that they have had no effect on the award; or

vi) the arbitral tribunal has exceeded its powers; or

b) the Court of First Instance finds:

i) that the subject-matter of the dispute is not capable of settlement by arbitration; or

ii) that the award is in conflict with public policy; or

iii) that the award was obtained by fraud;

§ 4. Except in the case mentioned in article 1690, § 4(1), an application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award in accordance with article 1678, § 1(a) or, if an application had been made under article 1715, from the date on which the party making the application for setting aside received the arbitral tribunal's decision on the application made under article 1715, in accordance with article 1678, § 1(a).

§ 5. The causes mentioned in § 2(a), (i), (ii), (iii) and (v) shall not give rise to the setting aside of the arbitral award, whenever the party that invokes them has learned of the said cause in the course of the proceedings but failed to invoke it at that time.

§ 6. The Court of First Instance, when asked to set aside an arbitral award, may, where appropriate and if so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the latter's opinion will eliminate the grounds for setting aside.

**Art. 1718.** By an explicit declaration in the arbitration agreement or

by a later agreement, the parties may exclude any application for the setting aside of an arbitral award, where none of them is a natural person of Belgian nationality or a natural person having his domicile or normal residence in Belgium or a legal person having its registered office, its main place of business or a branch office in Belgium.

### **Chapter VIII. Recognition and enforcement of arbitral awards**

**Art. 1719.** § 1. The arbitral award rendered in Belgium or abroad may only be enforced after the Court of First Instance has granted enforcement in full or in part in accordance with the procedure set out in article 1720.

§ 2. The Court of First Instance can render the award enforceable only if it can no longer be contested before the arbitrator(s) or if the arbitrators have declared it to be provisionally enforceable notwithstanding an appeal.

**Art. 1720.** § 1. The Court of First Instance has jurisdiction over an application relating to the recognition and enforcement of an arbitral award rendered in Belgium or abroad.

§ 2. The court with territorial jurisdiction is the Court of First Instance of the seat of the Court of Appeal in the jurisdiction of which the person against whom the enforcement is requested has his domicile or, in the absence of a domicile, his usual place of residence or, where applicable, its registered office or, failing this, its place of business or branch office. If that person is neither domiciled in, or a resident of, Belgium, nor has its registered office, place of business or branch office in Belgium, the application is made to the Court of First Instance of the seat of the Court of Appeal in the jurisdiction of which the award is to be enforced.

§ 3. The application shall be introduced and dealt with on a unilateral request.

The applicant shall elect domicile in the jurisdiction of the Court.

§ 4. The applicant shall enclose with his request the original copy or a certified copy of the arbitral award and of the arbitration agreement.

§ 5. The award may only be recognised or enforced if it does not violate the conditions of article 1721.

**Art. 1721.** § 1. The Court of First Instance may only refuse to recognise

or enforce an arbitral award, irrespective of the country in which it was made, in the following circumstances:

a) at the request of the party against whom it is invoked, if that party furnishes proof that:

i) a party to the arbitration agreement referred to in article 1681 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any such indication, under the law of the country where the award was rendered; or

ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; in this case, recognition or enforcement of the arbitral award may not be refused if it is established that the irregularity has had no effect on the arbitral award; or

iii) the award deals with a dispute not contemplated by, or not falling within, the terms of the arbitration agreement, or it contains decisions on matters beyond the scope of the arbitration agreement, provided that, if the provisions of the award on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters submitted to arbitration may be recognised or enforced ; or

iv) the award is not reasoned whereas such reasons are prescribed by the rules of law applicable to the arbitral proceedings under which the award was rendered; or

v) the composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; with the exception of an irregularity affecting the composition of the arbitral tribunal, such irregularities may however not give rise to a refusal to recognise or enforce the arbitral award if it is established that they have had no effect on the award; or

vi) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or;

vii) the arbitral tribunal has exceeded its powers; or

b) if the Court of First Instance finds that:

i) the subject-matter of the dispute is not capable of settlement by arbitration; or

ii) the recognition or enforcement of the award would be contrary to public policy.

§ 2. The Court of First Instance shall ipso jure stay the application for

as long as a written award signed by the arbitrators in accordance with article 1713, § 3 is not provided in support of the application.

§ 3. Where there is a reason to apply an existing treaty between Belgium and the country in which the award was rendered, the treaty shall prevail.

### **Chapter IX. Time bar**

**Art. 1722.** The condemnation pronounced by an arbitral award shall be time barred ten years after the date on which the arbitral award has been communicated.

## **SCHEDULE V : SECRETARIAT AND CONTACT INFORMATION**

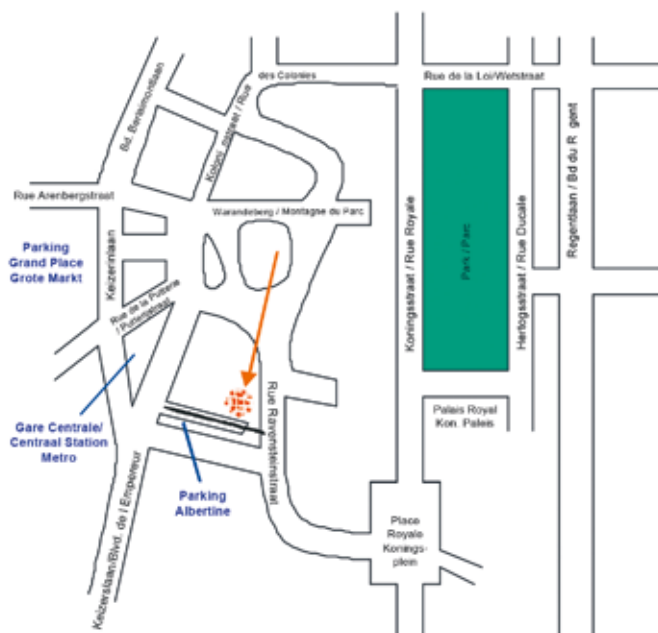
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