

## **MEDIATION RULES**

Text in force as from the 1st of January 2013.

The numbers of the legal provisions referred to in these Rules, are the provisions in force when the rules were approved.

### **Standard Mediation clause**

*"The parties hereby undertake to apply the CEPANI Mediation Rules to all disputes arising out of or in connection with this Agreement."*

The following provisions may be added to this clause:

*"The place of the mediation shall be..."*

*The proceedings shall be conducted in the (...) language"*

*"Should the mediation fail, the dispute shall be finally settled under the CEPANI Rules of Arbitration by one or more arbitrators appointed in accordance with the said Rules. The place of the arbitration shall be (town or city), the arbitration shall be conducted in the (...) language"*

### **Introduction**

These Rules shall apply if one or more parties wish to settle their dispute through mediation organized by CEPANI . It is not required that the parties have concluded a mediation agreement prior to the dispute nor that a mediation clause be inserted in an agreement between parties concerning which the dispute has arisen.

These Rules shall also apply to disputes arising out of contracts referring to CEPANI's Mediation Rules for Information and Communications Technology, which are abrogated and replaced by these rules.

Mediation is an alternative dispute resolution method whereby parties request a third person (the mediator) to assist them in their attempt to reach an amicable settlement of their dispute arising out of, or relating to, a contractual or other legal relationship of whatsoever nature.

When the nature of the dispute requires complementary specializations (e.g. legal and technical), several mediators may be appointed. In this case, the word "mediator" shall be read as mediators.

When more than two parties are involved in the dispute, the word "Requesting party", or "other party" shall be read and understood as involving several parties.

## **Article 1 Unilateral or joint request for mediation**

**1.1** A party wishing to have recourse to mediation under the CEPANI Rules shall submit its Request for Mediation to the Secretariat, in person or via its authorized representative or counsel. The Request may be submitted in electronic form or in hard copy and must be signed in both cases by the party wishing to have recourse to mediation or by its authorized representative or counsel.

If the unilateral Request is submitted in hard copy, it shall be supplied in a number of original and signed copies sufficient to provide one copy for each party, one copy for each mediator and one copy for the Secretariat.

Upon receipt of the Request, CEPANI shall send a copy of the Request to the other party or parties involved.

**1.2** The Request for Mediation may also be submitted jointly by all parties involved in the dispute.

The Request may be submitted in electronic form or in hard copy. In both cases, it must be signed by all parties or by their authorized representative or counsel.

If a joint Request is submitted in hard copy, it shall be supplied in two copies, one for each mediator and one for the CEPANI Secretariat.

**1.3** The Request shall contain, *inter alia*, the following information :

- name, address, registered office, telephone and fax number, e-mail address, and company registration number, if any, of the requesting party and the identity of any representative or counsel having the capacity to act on behalf of the requesting party.
- a unique electronic communication method chosen for the exchange of all communications during the proceedings (including the name of the contact person, the communication method and e-mail addresses), and a unique communication method chosen for the exchange of hard copy documents (including the name of the contact person, the communication method and postal addresses).
- in case of a unilateral Request for Mediation in accordance with article 1.1 : the name of the other parties, along with all the information the requesting party has for contacting the other parties or their authorized representatives or counsel, such as a postal or e-mail address, telephone and fax numbers, company registration number and any information obtained from previous contacts.
- a brief recital of the dispute.

- the proof of payment of the registration costs as fixed under Article 4 of Schedule I of these Rules.

**1.4** In the case of a unilateral Request for Mediation, as mentioned in Article 1.1 of these Rules, and if the Request contains a claim to a right, the requesting party who introduced the Request shall comply with the formalities set out in Article 1730 of the Belgian Judicial Code in order for the Request to suspend the limitation period and to have the effect of a formal notice.

In the case of a joint Request as mentioned in Article 1.2 of these Rules, the parties accept that, if their joint Request contains a claim to a right, it shall suspend the limitation period of the claim related to the said right during one month and shall have the effect of a formal notice.

## **Article 2 Answer to Request for Mediation**

Within two weeks after the Request has been sent as mentioned in Article 1.1, the other party shall inform the CEPANI Secretariat whether or not it wishes to participate in the mediation. It will do so preferably by using the response form available on the web site. This deadline may be extended with parties' consent.

If no positive answer is given within the said time limit, the Request for Mediation shall be deemed to have been rejected by the said other party.

A disagreement on the conditions set out by the requesting party is also considered as a refusal to take part in the mediation, unless the requesting party accepts in writing the conditions proposed by the other party or if both parties inform CEPANI of the conditions they have both agreed on.

## **Article 3 Effect of the mediation agreement**

When the parties agree to resort to CEPANI for mediation, they thereby submit to these Rules, including the schedules, in effect on the date of the receipt by the CEPANI Secretariat of the Request for Mediation.

## **Article 4 Appointment of the mediator(s)**

**4.1** The CEPANI Appointments Committee or the President of CEPANI shall appoint a mediator within two weeks following receipt of the positive response as mentioned in Article 2. In doing so, the mediator(')s(') availability, qualifications and ability to carry out the mediation in accordance with these Rules shall be taken into account.

The parties may also propose by mutual consent the name of a mediator to the Appointments Committee or to the President of CEPANI.

**4.2** When it notifies the identity of the mediator the CEPANI secretariat shall also communicate simultaneously to the parties:

- the administrative expenses of CEPANI;
- the amount of the advance for mediation costs;
- the conditions for the payment of these costs;
- the date and the place of the mediation.

**4.3** Provided that the advance for mediation costs has been fully paid, the CEPANI Secretariat shall transmit the file to the mediator as soon as the latter has been appointed.

**4.4** When several mediators are appointed, they will act as a body.

## **Article 5 Independence of the mediator**

The mediator shall be independent. Prior to his/her appointment, the mediator shall sign a statement of acceptance, availability and independence and shall undertake to comply with the Rules of Good Conduct set out in Schedule II.

The mediator shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature so as to call into question his/her independence in the eyes of the parties. The Secretariat shall provide such information to the parties in writing and fix a time limit for the receipt of their comments.

The mediator and/or the parties shall immediately disclose to CEPANI any facts or circumstances which might be of such a nature as to call into question the mediator's independence and which may occur during the mediation. In such event, CEPANI may, if the parties or one of them so requests, replace the mediator.

## **Article 6 Mediation protocol**

**6.1** The mediator is free to organize the mediation as he/she sees fit in accordance with these Rules.

Before starting the mediation, in accordance with Article 1731 of the Belgian Judicial Code, the mediator shall sign a mediation protocol with the parties which shall state *inter alia*:

- the scale of fees or the method of determining the fees of the mediator;
- the way in which the mediation costs will be divided among the parties and the amount of the advance foreseen to cover these costs, as determined in accordance with Article 12 of these Rules ;
- the method(s) of communication, if any, agreed by the parties and the mediator.

An original copy of the mediation protocol, duly signed by the mediator and by the parties or their authorized representative or counsels, shall be transmitted to the CEPANI Secretariat.

## **Article 7 Powers of the mediator**

**7.1** The mediator shall ensure that the proceedings are properly conducted. He/She shall create a favourable climate in which parties themselves can find a solution to their dispute.

**7.2** The mediator shall ensure that the parties are always treated on a balanced basis.

**7.3** If parties agree during a mediation that it would be useful for the mediator to be made aware of the documentary evidence or of certain documents, or if the mediator himself/herself finds it useful, they will be communicated accompanied with a list of the documents. This communication must not necessarily be made to the other party(ies).

**7.4** The mediator shall not have the power to impose a solution on the parties.

**7.5** If nothing else is foreseen before or during the mediation, the mediator's approach will mainly consist in facilitating the search for a settlement between the parties. On parties' request the mediator may however, insofar he/she judges it appropriate and being exclusively guided by the effectiveness of the procedure, give an opinion and express views regarding the parties' positions, both from a legal and a factual point of view. This opinion shall not bind the parties or the mediator. The opinion shall be construed as exclusively designed to give the parties an informed analysis provided by a neutral and independent third party with the aim of helping them to find a solution to their dispute.

**7.6** In the context of, and for the benefits of, his/her mission, the mediator may, with the consent of the parties, hear third parties if they accept to be heard or, when it appears useful in the search for a solution, consult an expert in one or more specific fields with a view to aiding the parties.

**7.7** After having consulted the parties, the mediator may decide to hold meetings at any location that he/she considers appropriate.

## **Article 8 Replacement of the mediator**

**8.1** In the event of the mediator's death, resignation, if there is a cause preventing him/her from fulfilling his/her duties, or upon request of all parties, the mediator shall be replaced.

**8.2** The mediator shall also be replaced when the Appointments Committee or the President decides that the mediator is prevented *de jure or de facto* from fulfilling his/her duties in accordance with these Rules or within the allotted time limits.

### **Article 9 Secrecy obligation of the mediator, the parties, their authorized representatives and counsel**

The mediator, the parties, their authorized representatives and counsel, as well as the experts or third parties that have been involved in the proceedings, have a duty of secrecy in accordance with Article 1728 of the Belgian Judicial Code.

Save with the approval of the mediator and the parties, the meetings held within the context of mediation are not open to persons not involved in the mediation. However, if all parties agree, other parties may participate in the mediation.

Parties shall appear in person, as the case may be via one or more representatives, with or without counsel. Their representatives must have a good knowledge of the dispute and the necessary decision-making power to settle it.

### **Article 10 Confidentiality of communications**

All communications between the parties and/or the mediator as from his/her appointment or by the latter for the purposes of the mediation, are confidential. The parties undertake to refrain from making any reference whatsoever to the mediation outside the context of the mediation. Unless otherwise agreed by the parties, this shall however not apply to the mediation protocol, or to the notification of the end of the mediation as mentioned in Article 11 herein , nor to any settlement reached by the parties at the end of the mediation.

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

However, unless otherwise agreed by all parties to the mediation, the parties undertake to refrain from in any way referring to the fact that the documents have been communicated as a part of the mediation.

## **Article 11 Settlement/ Non-settlement and end of the mediation**

### **Settlement/ Non-settlement**

11.1 Should the mediation lead to a settlement between the parties, the agreement shall be set forth in writing, dated and signed by the parties and, when requested by the parties, by the mediator. This document shall set out the precise undertakings of each party as well as the allocation of the mediation costs, if this differs from what was agreed in the mediation protocol.

The mediator shall send an original copy of the settlement to CEPANI.

11.2 In the event that the mediation fails to produce a settlement, or if the mediator considers that the mediation should not be pursued, he/she shall inform the CEPANI Secretariat and the parties thereof.

### **End of the mediation**

11.3 When an agreement is reached, the mediation shall end when a copy of the settlement, signed by the parties and, if needed, by the mediator, is sent to the CEPANI Secretariat. Parties may however agree, by so indicating in their settlement, that the mediation will end only later, for example to allow the mediator to remain in office until the settlement is carried out.

11.4 At any time, either party may refuse to continue the mediation. If no agreement is reached, the parties and the mediator acknowledge the lack of agreement and the mediator or one of the parties notifies the CEPANI Secretariat that no settlement has been reached, with a copy of the said notification to the parties.

11.5 In the event that the mediation fails, the mediator shall not act as an arbitrator, representative or counsel of a party in arbitral or judicial proceedings relating to the dispute which was the subject of mediation, unless otherwise agreed by the parties.

## **Article 12 Mediation costs**

12.1 The mediation costs shall include the fees and expenses of the mediator, as well as the CEPANI administrative expenses and all costs related to the mediation as have been agreed by the parties. The advance required to cover the mediation costs shall be paid to CEPANI prior to the appointment of the mediator by the Appointments Committee or the President. The said advance shall be fixed by the Secretariat on the basis of the total value of the sum of the principal claims and counterclaims, in accordance with the scale of fees in force at the time of the commencement of the mediation.

12. 2. Other costs and expenses relating to the mediation, such as the expenses incurred by a party, are not included in the mediation costs and are borne by the said party, unless otherwise agreed by parties, such agreement to be in writing.

12.3. If CEPANI decides in the course of the mediation, after having consulted the mediator, that the initial advance for mediation costs must be adjusted, the parties shall be requested to make a further advance payment.

Unless otherwise agreed by the parties, the initial advance on mediation costs, as well as any additional advance(s) on mediation costs, shall be payable in equal shares by the parties.

When a request for an additional advance on mediation costs has not been complied with, and after consultation with the mediator, the Secretariat may direct the mediator to suspend his/her work until the advance is fully paid.

12.4 At the end of the mediation, the mediation costs are deducted from the advance on mediation costs received. The outstanding balance, if any, is reimbursed to the parties, as may be agreed between them.

## SCHEDULE I

### Scale of Fees for Mediation

1. The mediation fees include the fees and expenses of the mediator as well as the expenses of CEPANI.

2. The fees and expenses of the mediator are determined by the Secretariat according to the amount in dispute in accordance with the following scale :

| Total amount of claims (in €) | COST<br>OF<br>SCALE | FEES             | MEDIATION |      |
|-------------------------------|---------------------|------------------|-----------|------|
|                               |                     | RATE PER<br>HOUR | HALF-DAY  | DAY  |
| 0 - 25.000                    |                     | 180              | 600       | 1200 |
| 25.001 - 50.000               |                     | 200              | 675       | 1350 |
| 50.001 -<br>100.000           | -                   | 250              | 850       | 1700 |
| 100.001 -<br>200.000          | -                   | 275              | 900       | 1800 |
| 200.001 -<br>500.000          | -                   | 300              | 1000      | 2000 |
| 500.001 -<br>1.000.000        | -                   | 350              | 1175      | 2350 |
| 1.000.001 - 2.000.000         |                     | 400              | 1300      | 2600 |
| > 2.000.000                   |                     | 450              | 1400      | 2800 |

(i) The scale of fees shall apply on the basis of all the respective claims as formulated at the time that the file is introduced.

(ii) The half-day fee is for a duration of three and a half hours; any supplementary time shall be payable on the basis of the hourly rate.

(iii) The daily fee is for a duration of seven hours; any supplementary time shall be payable on the basis of the hourly rate.

(iv) A « results based » fee may be stipulated in the mediation protocol. The fee may not be agreed in advance but may be agreed between by common agreement between the parties and the mediator after an agreement has been reached between the parties under the auspices of the mediator.

Except if otherwise agreed by the parties, the fee shall not be greater than three times the mediation fee calculated in accordance with the scale of fees.

3. The administrative expenses of CEPANI are fixed on a lump sum basis at 10% of the fees and the expenses of the mediator, determined as above and subjected to VAT .

4. Every request for mediation under the CEPANI Rules must be accompanied by the payment of an advance of € 500 on administrative expenses. Said amount is not refundable and is credited to the requesting party as part of its participation in the advance on costs for the mediation.

5. If the mediator is a VAT taxpayer, he so informs the Secretariat, which debits the parties with the amount of VAT payable on the fees of the mediator.

6. The mediator shall only be authorized to deal with claims in respect of which the advance has been paid.

## **SCHEDULE II**

### **RULES OF GOOD CONDUCT FOR MEDIATIONS ORGANIZED BY CEPANI**

1. The Chairman and Secretary-General of CEPANI, their associates and employees, shall not participate in any proceedings conducted under the CEPANI rules, either as an arbitrator, chairman of the mini-trial committee, mediator, expert, third person appointed to adapt contracts, or counsel.
2. In accepting his appointment by CEPANI, the mediator 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 mediator 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 Appointments Committee or the Chairman of CEPANI shall decide on his possible replacement. It or he shall make the decision alone and shall not disclose the reasons.
4. A mediator appointed upon the proposal of one of the parties shall neither represent nor act as that party's agent.
5. In the course of the proceedings, the mediator shall, in all circumstances, show the utmost impartiality.
6. The mediator shall obey the rules of strict confidentiality in each case attributed to him by the Secretariat.