

# **RULES OF ARBITRATION**

**1<sup>st</sup> March 2014**

## **Chapter I - General Principles**

### **Article 1 (Object of arbitration)**

Any dispute, public or private, domestic or international, that under the law may be resolved through arbitration, may be submitted to an arbitral tribunal within the Arbitration Centre of the Portuguese Chamber of Commerce and Industry, also known as the Commercial Arbitration Centre, according to these Rules.

**Note:** The restriction to "voluntary" arbitration and the reference to an "arbitration agreement" have been removed, to make it clear that the Rules also apply to mandatory arbitration.

### **Article 2 (Rules applicable)**

1 – Reference by the parties to these Rules involves accepting them as an integral part of the arbitration agreement and gives rise to the presumption that the Arbitration Centre is conferred jurisdiction to administrate the arbitration under these Rules.

2 – The rules applicable to the arbitration proceedings shall be those in force at the date of commencement of the arbitration proceedings, unless the parties have agreed to apply the rules in force at the date of the arbitration agreement.

**Note:** Paragraph 1 has been altered to clarify that referral to these rules implies the full application of the rules, unless there is an agreement to the contrary, and, naturally, the institutional nature of the arbitration, in accordance with the rules themselves that, in some provisions, presume an institutional reference framework for their application.

### **Article 3 (Form and revocation of arbitration agreement)**

1 – The arbitration agreement, whatever the legal modality adopted, must be in writing.

2 – The arbitration agreement is deemed to be in writing when set out in a document signed by the parties, in an exchange of letters or any other means of communication, namely email, irrespective of whether such instruments directly contain the text of the agreement or contain a clause referring to a document in which an agreement is contained.

3 – The arbitration agreement may be revoked at any time until the arbitral award is rendered, by document signed by the parties or by any of the means provided for in the preceding paragraph.

4 – The parties' intention to submit resolution of the dispute to an arbitral tribunal at the Commercial Arbitration Centre must derive from the arbitration agreement or subsequent agreement.

**Note:** This precept substantially corresponds to former article 3.

## **Chapter II - Interim relief**

### **Article 4**

#### **(Interim measures and preliminary orders)**

1 – Unless otherwise expressly agreed, acceptance of these Rules involves granting the arbitral tribunal powers to issue interim measures and preliminary orders.

2 – The arbitral tribunal may subject issuing interim measures to appropriate security being provided by the party in whose favour they are ordered; it must do so in the case of preliminary orders, unless it considers it inappropriate or unnecessary.

**Note:** An amendment is proposed to paragraphs 1 and 2 to harmonise the new regime on interim measures and preliminary orders laid down in the Law of Voluntary Arbitration (*Lei de Arbitragem Voluntária*) approved by Law no. 63/2011 of 14 December. ("LVA").

### **Article 5**

#### **(Emergency Arbitrator)**

1 – Until the arbitral tribunal is constituted, and unless otherwise expressly agreed, any of the parties may request, under the Rules on Emergency Arbitrators included in Appendix I of these Rules, that urgent interim measures be issued by an emergency arbitrator appointed by the Chairman of the Centre.

2 – Interim measures are considered to be urgent if they cannot wait for the arbitral tribunal to be constituted.

3 – Emergency arbitrators may not issue preliminary orders.

4 – The emergency arbitrator's decision is made by award or another form of decision.

5 – The emergency arbitrator retains its powers to decide on the request for urgent preliminary measures even if the arbitral tribunal is in the meantime constituted.

6 – The emergency arbitrator's powers terminate when the emergency arbitrator has made his or her decision, after which the arbitral tribunal will be competent to issue interim measures. If, however, the arbitral tribunal has not been constituted at such time, the emergency arbitrator retains its powers until the arbitral tribunal is constituted.

7 – The emergency arbitrator's decision may be freely amended and reversed upon request by any of the parties and is not binding on the arbitral tribunal; until the arbitral tribunal is constituted, the emergency arbitrator is competent to modify the decision and, afterwards, the arbitral tribunal is competent to do so.

8 – The arbitral tribunal shall decide on any dispute relating to the decision issued by the emergency arbitrator, namely in respect of its fulfilment.

9 – The emergency arbitrator shall not intervene when:

- a) The arbitration agreement was concluded before the date on which these Rules came into force;
- b) The parties have agreed to exclude intervention of an emergency arbitrator.

**Note:** New precept that was not contained in the previous 2008 Rules, nor in the preliminary draft submitted to public discussion. Following the comments received, the figure of emergency arbitrator is created to deal with situations in which interim measures are necessary before the arbitral tribunal has been constituted. The article is inspired by similar rules in the Rules of Arbitration of the ICC (article 29 and Appendix V), CEPANI (article 26), the Stockholm Chamber of Commerce (Appendix II) and the Swiss Chambers (article 43). In terms of application over time, and considering its particularly innovative character, it was decided to make the emergency arbitrator applicable only to arbitration agreements drawn up after the new rules entered into force.

## **Chapter III - Arbitral Tribunal**

### **Article 6 (Number of arbitrators)**

1 – The arbitral tribunal shall consist of a sole arbitrator or three arbitrators.

2 – When the parties have not agreed on the number of arbitrators, the arbitral tribunal shall consist of a sole arbitrator, unless, after consulting the parties, and bearing in mind the characteristics of the dispute and the date on which the

arbitration agreement was concluded, the Chairman of the Centre decides that the tribunal shall consist of three arbitrators.

**Note:** Corresponds to former article 5. Paragraph 2 is amended in order to provide greater flexibility to the composition of the arbitral tribunal in cases where the parties have not agreed on the number of arbitrators, precisely because that flexibility embodies one of the advantages of institutional arbitration over *ad hoc* arbitration. It allows that, in these cases, once the parties have been consulted, the number of arbitrators may be adjusted to the specific characteristics of the dispute and the parties' position on the matter. It is understood that, in the cases in which the parties have not agreed upon the number of arbitrators, the margin for consideration granted to the Chairman of the Centre shall be sufficient and appropriate to prevent any possible expectation that a party (that has concluded an arbitration agreement between September 2008 and January 2014 without establishing the number of arbitrators) has arising from the default rule in the 2008 Rules that established that the tribunal would consist of a sole arbitrator. In any case, the date on which the arbitration agreement was concluded is precisely added as a specific point for consideration by the Chairman of the Centre, because the default rule of the 1994 rules, which were in force until 2008, was that the tribunal would consist of three arbitrators.

#### **Article 7 (Requirements of arbitrators)**

Further to the characteristics and qualifications on which the parties may agree, and those arising from these Rules or the Code of Ethics annexed thereto, arbitrators shall be fully capable natural persons.

**Note:** Corresponds to former article 6. Amendments are proposed in order to harmonise the text with the other provisions in the Rules.

#### **Article 8 (Composition of the arbitral tribunal)**

1 – In the arbitration agreement or subsequent agreement, the parties may appoint the arbitrator or arbitrators or establish the procedure for their appointment.

2 – If the arbitral tribunal consists of a sole arbitrator, such arbitrator shall be appointed by the parties; if, after the Answer has been submitted, the parties fail to do so within twenty days of the notification for such purpose by either party, the Chairman of the Centre shall make the appointment.

3 – If the arbitral tribunal consists of three arbitrators and the parties have failed to agree on its composition or the respective appointment procedure, the claimant shall nominate one arbitrator in the Request for Arbitration and the respondent shall nominate an arbitrator in the Answer, and the third arbitrator, who shall

preside, shall be chosen by the arbitrators appointed by the parties, within twenty days of acceptance by the last arbitrator to accept the appointment.

4 – In all cases in which the arbitrator has not been appointed under the previous paragraphs, the Chairman of the Centre shall appoint the arbitrator or arbitrators required.

**Note:** Corresponds, with amendments, to former article 7. Paragraphs 2 and 3 are amended, with default rules introduced relating to the moment on which arbitrators are appointed. The previous paragraphs 4 and 5 are joined to form a single paragraph 4, which includes all the situations in which arbitrators are appointed by the Chairman of the Centre.

### **Article 9 (Multiple parties)**

1 – Where there are multiple parties, the claimants as a group and the respondents as a group shall each be deemed to constitute a party for the purposes of appointment of arbitrators.

2 – When the arbitral tribunal consists of three arbitrators, if the claimants or respondents fail to agree on the choice of arbitrator, such appointment shall be made by the Chairman of the Centre.

3 – In the case referred to in the previous paragraph, if the claimants or respondents who failed to agree on the choice of arbitrator have conflicting interests in relation to the substance of the dispute, the Chairman of the Centre may, if considered justified to ensure equality between parties, further appoint all the arbitrators and, among them, the presiding arbitrator, and in such case the appointment meanwhile made by one of the parties shall become void.

**Note:** Corresponds, with amendments, to former article 8. An amendment is made to bring this regime closer to article 11 of the LVA. In order to make the decisions to be made by the Chairman of the Centre easier to foresee, paragraph 3 introduces criteria for consideration when making the decision to appoint all members of the tribunal. It also clarifies that this decision naturally leads to the extinction of appointments that may have been made previously by another party.

### **Article 10 (Acceptance of appointment)**

1 – No one may be compelled to act as arbitrator; however, once the appointment is accepted, an arbitrator may only legitimately withdraw from office on the grounds of supervening circumstances, recognised by the Chairman of the Centre, which prevent him or her from exercising his or her duties.

2 – Upon acceptance of appointment, the arbitrator undertakes to exercise his or her duties under these Rules and to respect the Code of Ethics annexed hereto.

3 – The appointment is considered to be accepted when the appointed person signs a statement of acceptance, availability, independence and impartiality, using the model provided by the Arbitration Centre, within twenty days of the notification to do so.

4 – An arbitrator who accepts the appointment and subsequently withdraws without justifiable grounds shall be liable for any damages caused.

**Note:** Corresponds, with amendments, to former article 9. An amendment is made to demand express acceptance by the arbitrator, in accordance with the solution in article 12(2) of the LVA. A code of ethics is also created, similar to the Arbitrators' Code of Ethics approved by the Portuguese Arbitration Association, which shall be annexed to the Rules and which arbitrators shall be obliged to uphold.

### **Article 11** **(Independence, impartiality and availability of arbitrators)**

1 – Arbitrators shall be and remain independent, impartial and available.

2 – Any person who agrees to sit on an arbitral tribunal shall sign the statement provided for in the previous article, in which he or she shall disclose any circumstances which may, from the parties' perspective, give rise to reasoned doubts as to his or her independence, impartiality or availability.

3 – When the arbitration proceedings are underway, arbitrators shall disclose without delay of any new circumstance which may, from the parties' perspective, give rise to reasoned doubts as to his or her independence, impartiality or availability.

4 – The disclosure of any circumstances according to the previous paragraphs does not, in itself, constitute a reason to challenge the appointment.

**Note:** Corresponds, with amendments, to former article 10. Amendments are made according to the new regime on the independence and impartiality of arbitrators that arises from the LVA. It also adds the requirement for the arbitrator to be available, an essential condition for the efficiency of the arbitration. It is made clear that the extension of the duty to reveal shall be assessed from the parties' perspective. Although the new paragraph 4 may be redundant, it was thought desirable to specify the fact that an arbitrator having circumstances that may give rise to reasoned doubts from the parties' perspective does not mean, clearly, that he or she is not independent, impartial and available, even if there is a justified motive to challenge the appointment. In relation to the preliminary draft, and in light of the comments received during the public discussion period, paragraph 1 was altered so is to avoid dogmatic discussions on the concepts of independence and impartiality that it is not the Rules' responsibility to resolve.

## **Article 12 (Challenge of arbitrators)**

1 – An arbitrator may only be challenged when there are circumstances that may objectively raise justified doubts as to his or her independence, impartiality or availability, or if he or she lack the qualifications agreed by the parties.

2 – A party may not challenge an arbitrator it has appointed, save supervening occurrence or knowledge of cause of challenge.

3 – Appointments shall be challenged by written submission to the Chairman of the Centre, within fifteen days from the date on which the party challenging the appointment learns of the respective grounds. The other party shall be notified of such challenge, together with the arbitrator concerned and the other arbitrators, any of whom may comment on the matter within ten days. The Chairman of the Centre decides on the merits of the challenge of the arbitrator.

4 – If neither party challenges the appointment in relation to the circumstances disclosed by the arbitrator under the previous article (and in any case relating to circumstances that have not been the subject of a challenge), none of those circumstances may be considered as grounds for a later challenge of the arbitrator.

5 – The Chairman of the Centre may, exceptionally, after consulting the parties and members of the tribunal, officially refuse the appointment of an arbitrator by either party if there is a justified suspicion of a serious or highly relevant fault in independence, impartiality or availability.

**Note:** Corresponds, with amendments, to former article 11. Amendments are introduced according to the new regime on the independence and impartiality of arbitrators that arises from the LVA and in accordance with the amendments to the previous article. In light of the broader duty to disclose, it is made clearer that consideration of a challenge involves an independent, objective consideration of the circumstances revealed. In relation to the preliminary draft, paragraph 4 was added to clarify that the parties' lack of reaction to the circumstances revealed by the arbitrator produces preclusive effects. Paragraph 5 was also introduced in order to allow the Centre itself to officially refuse the appointment of an arbitrator in the event of a well-founded suspicion of a serious fault in independence or impartiality (these shall mostly be situations of the type included in the "non-waivable red list" of the International Bar Association Guidelines on Conflicts of Interest in International Arbitration).

**Article 13**  
**(Replacement of arbitrators)**

1 – If any of the arbitrators turns down the appointment, dies, withdraws, is permanently prevented from performing duties or terminates his or her duties following a decision taken by the Chairman of the Centre under the previous article or if, for any other reason, the appointment is voided, such arbitrator shall be replaced, according to the rules applicable to appointment, with the necessary adaptations.

2 – Exceptionally, the Chairman of the Centre may, after consulting the parties and the arbitral tribunal, replace an arbitrator on his or her own initiative, if the arbitrator does not perform his or her duties in accordance with these Rules and the Code of Ethics.

3 – When an arbitrator has to be replaced, the arbitral tribunal shall decide, after consulting the parties, if and to what extent prior procedural acts shall be repeated before the reconstituted arbitral tribunal.

4 – If, however, the reason for replacement occurs after closure of the proceedings, the award is made by the remaining arbitrators, unless they deem this not to be convenient or if either party expressly objects.

**Note:** Corresponds, with amendments, to former article 12. In particular, the Chairman of the Centre is assigned powers to, exceptionally, replace an arbitrator if the arbitrator does not perform his or her functions in accordance with the Rules and the Code of Ethics. In relation to the preliminary draft, paragraph 1 was altered to cover all situations in which an arbitrator may terminate his or her duties.

**Article 14**  
**(Appointment of arbitrators by the Commercial Arbitration Centre; list of arbitrators)**

1 – Whenever the Chairman of the Centre is required to appoint the arbitrator or arbitrators, the arbitrators shall be chosen from the names on the list approved by the Centre's Arbitration Board, save when this list does not include persons with the qualifications required by the specific features of the dispute in question.

2 – In international arbitrations, the Chairman of the Centre shall take into account the possible convenience of appointing an arbitrator of a different nationality to that of the parties.

**Note:** Corresponds, with amendments, to former article 13. A new paragraph 2 is introduced in order to encourage the appointment of arbitrators of different nationalities to that of the parties in



international arbitration in order to guarantee, from the parties' perspective, greater independence and impartiality. In relation to the preliminary draft, the former paragraph 2 was repealed as it was considered unnecessary.

## **Chapter IV - Arbitral Proceedings**

### **Article 15 (Place of arbitration)**

1 – The parties may freely choose the place of arbitration.

2 – In the absence of an agreement between the parties, the place of arbitration shall be decided by the tribunal in accordance with the characteristics of the dispute; in any case, regardless of the place of arbitration, the arbitral tribunal may, on its own initiative or upon request by any of the parties, perform sessions, hearings or meetings, allow performance of any evidentiary act or make any deliberations in any other place.

**Note:** Corresponds, with amendments, to former article 14. It was intended to introduce greater flexibility in relation to the choice of location for the arbitration, establishing the national and international character of the Centre.

### **Article 16 (Language of arbitration)**

1 – The parties may freely choose the language or languages of arbitration.

2 – In the absence of an agreement between the parties, the language or languages of arbitration shall be decided by the tribunal.

**Note:** New precept.

### **Article 17 (Representation of the parties)**

The parties may appoint attorneys to represent them and advisors to assist them.

**Note:** Corresponds to former article 15.

### **Article 18 (Rules of proceedings and conduct of the arbitration)**

1 – Without prejudice to the provisions of the following paragraphs, the arbitral tribunal shall conduct the arbitration in such a manner as it considers most

appropriate, including by establishing procedural rules that do not conflict with the non-derogable provisions of these Rules.

2 – In exercising its powers to conduct the arbitration, the arbitral tribunal, having regard to the circumstances of the case in question, shall promote swiftness and efficiency and give the parties reasonable opportunity to assert their rights, always respecting the principles of equal treatment and the right to be heard.

3 – In the arbitration agreement or thereafter, the parties may establish procedural rules provided they do not conflict with the non-derogable provisions of these Rules.

4 – Agreement on procedural rules subsequent to the commencement of the arbitral proceedings shall only be effective with the agreement of the Chairman of the Centre, prior to constitution of the arbitral tribunal, and with the agreement of the arbitral tribunal, once it has been constituted.

**Note:** Corresponds, partially and with amendments, to former article 16. The arbitral tribunal is assigned broad powers for conducting the arbitration and directing the procedural process in order to allow greater flexibility and efficiency.

### **Article 19 (Request for Arbitration)**

1 – A party wishing to have recourse to arbitration at the Commercial Arbitration Centre shall submit its Request for Arbitration to the Secretariat, attaching the arbitration agreement or proposal submitted to the other party for such agreement.

2 – The claimant shall indicate the following in its Request for Arbitration:

- a) The full names of the parties, their addresses and, if possible, email addresses;
- b) A brief description of the dispute;
- c) The claim and value of the relief sought, even if estimated;
- d) If applicable, appointment of the arbitrator that the party has the responsibility to appoint, and any other indications relating the constitution of the arbitral tribunal; and
- e) Any other circumstances it considers relevant.

**Note:** Corresponds, with amendments, to former article 17. In accordance with the LVA and most rules of arbitration, clauses b) and c) of paragraph 2 are modified to make it clear that the rules are compatible with a procedural model in which arbitration begins with a request to have recourse to

arbitration for the dispute, which merely contains a brief description of the dispute to allow, specifically, that the decisions referred to in the following articles may be made and, in particular, that the appropriate preliminary orders can be issued in the preliminary hearing. In this procedural model, the substantial written statements shall be presented only after the arbitral tribunal has been constituted under the terms defined by it. Therefore, current article 30 has also been amended so that ordinarily there shall only be pleadings after the arbitral tribunal has been constituted.

## **Article 20 (Notification and Answer)**

1 – Within five days, the Secretariat shall notify the respondent, sending a copy of the Request for Arbitration and accompanying documents.

2 – The respondent may present its Answer within thirty days, and shall:

- a) Take a position on the dispute and the claim;
- b) If applicable, appoint the arbitrator that it has the responsibility to appoint, or provide any other indications relating to the constitution of the arbitral tribunal;
- c) Indicate any other circumstances it considers relevant.

3 – If requested and duly justified by the respondent, the Chairman of the Centre may extend the time limit for submitting its Answer.

4 – The Secretariat shall send the parties a copy of the Answer and the accompanying documents within five days of receiving them.

**Note:** Corresponds, with amendments, to former articles 18 and 19.

## **Article 21 (Claims by the Respondent)**

1 – The respondent may, in its Answer, make counterclaims against the claimant provided that the object of the counterclaims is included in the same arbitration agreement or in an arbitration agreement compatible with the arbitration agreement on which the Request for Arbitration is based.

2 – The respondent may also present claims against other respondents provided that:

- a) The object of such claims is included in the same arbitration agreement; or
- b) The object of such claims is included in an arbitration agreement compatible with the arbitration agreement on which the Request for

Arbitration is based, and the circumstances of the case show that, at the time when the arbitration agreements were concluded, all the parties accepted that the same arbitration proceedings could take place with the presence of all of them.

3 – If counterclaims are made in the Answer, the respondent shall make a brief description of the dispute and indicate the respective value, even if estimated.

4 – If the respondent makes counterclaims, the party against which the claims are made may reply, within thirty days, and the provisions relating to the respondent's Answer shall apply.

5 – In the cases where the object of the counterclaims made by the respondent is not included in the same arbitration agreement that forms the basis for the Request for Arbitration, the arbitral tribunal may exclude admissibility if it considers that such admission causes undue disruption to the proceedings.

**Note:** New precept that contains provisions that were previously found in article 18(4). As well as the amendments arising from the previous article, the regime for counterclaims is modified and claims are permitted against other respondents.

On the one hand, making counterclaims against the claimant is no longer dependent upon meeting the requirements of the Code of Civil Procedure, and merely requires the jurisdiction of the arbitral tribunal. In light of the comments received during the public discussion period, new amendments were introduced so that the arbitral tribunal's ability to exclude counterclaims for reasons of undue disturbance to proceedings may only apply in cases with different arbitration agreements (although they are necessarily compatible).

On the other hand, the respondent is permitted to submit claims against other respondents not only when the same arbitration agreement is at stake but also when the arbitration agreement is different but compatible. In this last case, however, for the tribunal to be competent, it must be demonstrated that all the parties accepted that proceedings could take place with the presence of all of them. In this context, in light of the comments received during the public discussion period, it was made clear that consideration of the will of the parties clearly referred to the date of the contracts. The same clarification is made in relation to intervention by third parties.

## **Article 22**

### **(Claims of lack of jurisdiction of the arbitral tribunal).**

1 – If an objection that the tribunal lacks jurisdiction is raised in the Answer, the opposing party may reply within thirty days.

2 – If requested and duly justified by the claimant, the Chairman of the Centre may extend the time limit mentioned in the previous paragraph.

3 – If an objection that the tribunal lacks jurisdiction is not raised in the Answer, it may still be raised in the pleading submitted after the arbitral tribunal is constituted

unless, in light of the content of the Request for Arbitration, it could have been raised in the Answer.

4 – The provisions in previous articles are applicable, with due adaptation, if the respondent has made counterclaims against the claimant or other respondents.

**Note:** Partially corresponds to former articles 20 and 27. The reply to exceptions before constitution of the arbitral tribunal is eliminated. It is proposed that the possibility to reply on matters of jurisdiction before constitution of the arbitral tribunal be enshrined so that, if applicable in the case in question, the matter may be decided upon immediately after constitution of the arbitral tribunal without the need for more intervention by the parties.

In light of the convenience of resolving the matter of the tribunal's jurisdiction as early as possible and since, under the Rules, and differently from the LVA, the Request for Arbitration shall contain a brief description of the dispute, it was understood that the possible lack of jurisdiction shall be established, as a rule, in the Answer, without prejudice to it being established in a later written statement if the Request for Arbitration does not allow for an immediate conclusion.

### **Article 23 (Lack of Answer)**

1 – If the respondent fails to submit any Answer to the Request for Arbitration or the claims made by the claimant or if, for any reason, they are voided, the arbitration shall proceed.

2 – The lack of an Answer to the Request for Arbitration or the claims made by the claimant shall not exempt the other party from having to prove its claim and respective grounds.

**Note:** Mostly corresponds to former article 22.

### **Article 24 (Change in the positions of the parties)**

During the arbitration proceedings, any party may amend or supplement the facts put forward, including the relevant claims, unless the arbitral tribunal refuses such change, namely having regard to the established procedural rules, the time at which the change is made and the harm caused to the opposing party by the change.

**Note:** This is an innovative precept inspired by article 33(3) of the LVA and coherent with the amendments proposed to articles 17 and 18.

### **Article 25 (Third party joinder)**

1 – The following third parties may be allowed to intervene in the arbitral proceedings:

a) Those bound to all the parties by the same arbitration agreement; or

b) Those bound by another arbitration agreement compatible with the arbitration agreement on which the Request for Arbitration is based, provided that the circumstances of the case in question show that, at the time when the arbitration agreements were concluded, all the parties accepted that the same arbitration proceedings could take place with the presence of all of them.

2 – If intervention is requested before the arbitral tribunal is constituted, the Chairman of the Centre has the power to decide on its admissibility, after consulting the parties and the third party.

3 – If the intervention is requested before the arbitral tribunal is constituted, its constitution is governed by the provision for multiple parties, and the appointment of the arbitrator by the party linked to the intervening third party is voided, such two parties then having a time limit of twenty days to agree on the arbitrator that they must appoint.

4 – The decision by the Chairman of the Centre to allow the intervention of third parties under the previous paragraphs shall not be binding on the arbitral tribunal, and its constitution shall remain unaltered, irrespective of the decision made by the arbitral tribunal on the intervention.

5 – If the intervention is requested after the arbitral tribunal is constituted, the decision on the admissibility of the intervention shall be made by the tribunal, after consulting the parties and the third party, and it may only be allowed if the third party declares that it accepts the composition of the tribunal.

6 – In any case, any spontaneous intervention shall always involve acceptance of the composition of the tribunal at the time.

**Note:** Corresponds to former article 25, and has been rewritten overall. Although the LVA appears to only allow intervention by additional parties bound by the same arbitration agreement that forms the basis for the Request for Arbitration, it also appears to allow intervention when the arbitration agreements are different, provided that they are compatible (from the point of view of the tribunal's jurisdiction) and provided that it is demonstrated, in order to guarantee the arbitral tribunal's jurisdiction, that all the parties accepted that the arbitration could take place between all of them.

Compared with the text in the preliminary draft, it is made clear that consideration of the will of the parties for the proceedings to take place in the presence of all, in spite of there being different

(although necessarily compatible) arbitration agreements, is clearly assessed by the date of the contracts.

## **Article 26 (Consolidation)**

1 – Any party may apply to the Chairman of the Centre for consolidation of pending proceedings under any of the following circumstances:

- a) If the parties are the same;
- b) If the requirements for third party joinder are met.

2 – The Chairman of the Centre, after consulting the parties and the arbitrators already appointed, shall refuse consolidation if it is not convenient in light of the need to reconstitute the tribunal, the state of the proceedings or any other special reason.

3 – If consolidation is ordered, the tribunal already constituted is maintained; if this is not possible, due to multiple parties as a result of consolidation, the tribunal is reconstituted in accordance with the applicable rules.

4 – Extension of the scope of arbitration as a result of the consolidation shall be a legitimate cause for resignation of arbitrators, who shall tender such resignation within ten days of being notified of such consolidation.

**Note:** Corresponds to former article 24. The article is reformulated overall to include the conditions under which joinder is possible, in coherence with the regime for intervention of additional parties.

## **Article 27 (Defining or refusing constitution of the arbitral tribunal)**

1 – When the Request for Arbitration and eventual Answers have been submitted, and once eventual procedural incidents that may have arisen have been decided, the Chairman of the Centre shall define the composition of the arbitral tribunal, designating the arbitrator or arbitrators which he or she is required to appoint, under the arbitration agreement and these Rules, without prejudice to the provisions of the following paragraph.

2 – The Chairman shall refuse to constitute the arbitral tribunal in the following cases:

- a) Where there is no arbitration agreement or where such agreement is manifestly null and void;

- b) Where there is manifest incompatibility between the arbitration agreement and the non-derogable provisions of these Rules;
- c) When, if there is no arbitration agreement, the claimant has submitted a proposal for entering into an arbitration agreement that refers to the Rules and the other party, after being notified of the proceedings, fails to present any answer or expressly rejects the arbitration process;
- d) When the parties fail to pay the advance on arbitration costs.

3 – The arbitral tribunal shall be deemed constituted upon acceptance by all the arbitrators of their appointment.

**Note:** Substantially corresponds to former article 26, with the amendments arising from previous articles and elimination of cross-references.

### **Article 28 (Powers of the Chairman of the Centre)**

In the absence of any specific provision in the Rules, the Chairman of the Centre shall decide on any procedural incidents which may arise up to the constitution of the arbitral tribunal, without prejudice to the exclusive jurisdictional powers of the arbitrators.

**Note:** Corresponds to former article 23. The word "exclusive" is added, for clarification.

### **Article 29 (Decision on the jurisdiction of the arbitral tribunal)**

1 – If the issue of lack of jurisdiction of the tribunal has been raised and the arbitral tribunal considers that the file already contains sufficient evidence, it shall decide, within thirty days from the date of its constitution, on the issue of its jurisdiction.

2 – If, however, it finds the need for the parties to produce further evidence or arguments, the arbitral tribunal shall call a preliminary hearing and determine, after consulting the parties, the proceedings and timetable for the decision on the issue of its jurisdiction.

**Note:** Partially corresponds to former article 27, and greater flexibility on the form and time of the decision on jurisdiction is introduced. The former article 27(5) is repealed, in light of article 18(9) of the LVA.



### **Article 30 (Preliminary hearing)**

1 – If the arbitration proceeds, the arbitral tribunal summons the parties for a preliminary hearing.

2 – The arbitral tribunal shall define, at the preliminary hearing or up to thirty days afterwards, having consulted the parties:

- a) The issues to be decided;
- b) The provisional procedural timetable, including the date or dates for the hearing;
- c) The pleadings to be presented, the means of evidence and the rules and time limits for producing them;
- d) The date until which legal opinions may be submitted;
- e) The rules applicable to the hearing, including, if considered convenient, maximum time limits available for producing evidence, respecting the principle of equality of the parties;
- f) The time limit and form of presenting closing arguments;
- g) The value of the arbitration, without prejudice to the possibility of ulterior modifications.

**Note:** Partially corresponds to former articles 28 and 29. The amendments proposed intend to adapt the regime to the existence of additional pleadings and introduce greater flexibility and efficiency in the conduct of proceedings. Compared with the text in the preliminary draft, the former paragraph 2 is repealed since it is deemed unnecessary in the context of arbitration, and clause c) is modified in order to exclude the mere possibility of written statements presented after the preliminary hearing. A new clause is also introduced on the value of the arbitration.

### **Article 31 (Taking and presentation of evidence)**

1 – The arbitral tribunal shall determine the admissibility, relevance and value of the evidence produced or to be produced.

2 – The arbitral tribunal shall establish the facts of the case in the shortest time possible, and may reject requests by the parties that it considers not relevant to the decision or which are manifestly dilatory. The tribunal shall, however, hold a hearing for the production of evidence whenever one of the parties so requests.

3 – In particular, on its own initiative or upon request of one or both of the parties, the arbitral tribunal may:

- a) Hear the parties or third parties;
- b) Arrange for the submission of documents in possession of the parties or third parties;
- c) Appoint one or more experts, define their task and receive their depositions or reports;
- d) Conduct first hand examinations or inspections.

4 – Without prejudice to the rules defined by the arbitral tribunal, the pleadings shall be accompanied by all the documentary evidence of the facts put forward; presentation of new documents shall be admissible only in exceptional cases and following authorisation by the arbitral tribunal.

**Note:** Partially corresponds to former articles 29 and 30, also including the provisions in former article 21. In line with the LVA and the content of most arbitration rules, the Arbitral Tribunal is also assigned broad powers in matters of evidence. Compared with the text in the preliminary draft, a new rule is introduced, in line with article 34(1) of the LVA, so that holding a hearing is necessary if one of the parties so requests.

## **Article 32 (Closing of proceedings)**

1 – Once closing arguments have been made and upon conclusion of any inquiries which may have been ordered, the proceedings are considered closed.

2 – On an exceptional basis, the arbitral tribunal may re-open the proceedings, when there are justified grounds and for a specific purpose.

**Note:** Corresponds, with amendments, to former article 31. The matter of arguments and legal opinions is addressed in article 27, and shall be regulated in the preliminary hearing.

## **Chapter V - Arbitral Award**

### **Article 33 (Time limits for the award and for the arbitration)**

1 – Unless otherwise agreed by the parties, the final award shall be rendered within two months from the closing of the proceedings.

2 – The parties may agree to an extension or on a suspension of the time limit for rendering the award.

3 – If, after the constitution of the arbitral tribunal, there is any alteration in its composition, the Chairman of the Centre may, upon request from the arbitrators, declare that on reconstitution of the tribunal a new period of time commences for the rendering of the final award.

4 – The overall time limit for concluding the arbitration is one year, counting from the date on which the arbitral tribunal is considered to have been constituted.

5 – The Chairman of the Centre, upon justified request by the arbitral tribunal, and after consulting the parties, may extend the time limits established in the previous paragraphs one or more times, unless both parties oppose such extension.

**Note:** Corresponds to former article 32. Bearing in mind article 43(2) of the LVA and the institutional nature of arbitration, it is established in paragraph 5 that the power to extend the time limit belongs to the Chairman of the Centre and not the tribunal.

#### **Article 34 (Deliberations of the arbitral tribunal)**

1 – When the arbitral tribunal comprises more than one member, any award shall be adopted by a majority of votes, in a deliberation in which all the arbitrators shall take part.

2 – If no majority is achieved, the award shall be decided by the chairman of the arbitral tribunal.

3 – Issues relating to orders, procedural issues or any procedural initiative may be decided by the presiding arbitrator alone, if the parties or the other members of the tribunal provide authorisation to do so.

**Note:** Corresponds to former article 34. Paragraph 3 is added, in line with article 40(3) of the LVA, to allow, with due authorisation, decisions to be made only by the presiding arbitrator in matters relating to proceedings.

#### **Article 35 (Applicable law; equity clauses)**

1 – The arbitral tribunal shall decide in accordance with the applicable law, unless the parties, in the arbitration agreement or other document signed prior to the first arbitrator accepting the appointment, have authorised it to decide *ex aequo et bono*.

2 – After the arbitral tribunal has been constituted, authorisation from the parties for the award to be decided *ex aequo et bono* shall require the acceptance of all the arbitrators.

**Note:** Corresponds to former article 35.

### **Article 36 (International arbitration)**

1 – In international arbitrations, in the absence of any choice of applicable rules of law, the arbitral tribunal shall apply the law of the state with which the subject-matter of the dispute has the closest connection.

2 – The provisions of the preceding paragraph as regards a decision *ex aequo et bono* shall apply to international arbitration.

**Note:** Corresponds to former article 36. Compared with the preliminary draft, and in light of the comments received during the public discussion period, it was intended to bring the Rules closer to article 52 of the LVA.

### **Article 37 (Trade usages)**

In reaching its decision, the tribunal shall take into account the trade usages it deems relevant and appropriate to the case in hand.

**Note:** Corresponds to former article 37.

### **Article 38 (Settlement)**

If, during the proceedings, the parties agree on settlement of the dispute, the tribunal shall end proceedings and, if so requested, hand down an award ratifying such settlement, unless the content of the settlement infringes any principle of public policy.

**Note:** Corresponds, with amendments, to former article 28(3). It appears convenient to establish that the tribunal shall formally end proceedings and make it clear that public policy is a limit to the content of the settlement.

### **Article 39 (Arbitral award)**

1 – The final award of the arbitral tribunal shall be rendered in writing and shall:

- a) Identify the parties;
- b) Refer to the arbitration agreement;
- c) Identify the arbitrators and indicate the form of their appointment;
- d) Mention the subject-matter of the dispute;
- e) Set out the grounds for the award;
- f) State the value of the arbitration and apportionment of the arbitration costs among the parties, including, if applicable, ordering their payment;
- g) Indicate the place of arbitration and the place and date on which the award was rendered;
- h) Be signed by at least the majority of the arbitrators, with an indication as to, if applicable, dissenting votes or explanation of votes, duly identified;
- i) Indicate the arbitrators who could not or were unwilling to sign, as well as, if applicable, the reason for the omission.

2 – The arbitral tribunal may decide the merits of the case through a single award or as many partial awards as it deems necessary, and the provisions in the previous paragraph shall apply to all.

**Note:** Corresponds, with amendments, to former article 38. As well as harmonising terminology, clause i) is added, bearing in mind article 24(1) of the LVA ("*reason for omission of the remaining signatures*") and the possibility of partial awards is expressly established, in line with article 42(2) of the LVA. In relation to appeals against partial awards (and decisions on jurisdiction), it was understood that it is not the Rules' responsibility to take a position, and the matter is governed by the applicable law (normally, but not necessarily, the LVA).

### **Article 40 (Correction, interpretation and additional award)**

1 – Once the award has been rendered, the Secretariat shall notify the parties of the same and send them a copy, as soon as any costs resulting from the proceedings have been paid in full.

2 – On its own initiative or upon request by any of the parties submitted in the thirty days following notification of the arbitral award, the arbitral tribunal may correct material errors or interpret any obscure or ambiguous point in the award.

3 – Upon request by any of the parties submitted in the thirty days following notification of the arbitral award, the arbitral tribunal may, after consulting the parties, make an additional award on parts of the claim or claims presented within the arbitral proceedings that were not decided.

4 – The provisions on the arbitral award apply, with due adaptations, to corrections, interpretations of the arbitral award and to additional awards.

**Note:** Corresponds, with amendments, to former article 39. It was intended to harmonise with the regime in articles 44 and 45 of the LVA.

#### **Article 41 (Public nature of the award)**

1 – Arbitral awards on disputes in which one party is the state or another public law legal person are public, unless the parties decide otherwise.

2 – Other arbitral awards are similarly public, after removing elements that identify the parties, unless one of the parties opposes publicity.

**Note:** Innovative precept that intends to ensure transparency as a factor to legitimise and give credibility to arbitration when public entities are involved. Compared with the text in the preliminary draft, it was decided to clarify that in disputes involving the state or other public entities, the parties may, upon agreement, decide against the public nature of the award. In paragraph 2, there is a provision for the need to remove elements identifying the parties.

#### **Article 42 (No recourse)**

The arbitral award is not subject to appeal.

**Note:** Corresponds, with amendments, to former article 40. It is proposed that the word "final" is removed and paragraph 2 is removed because it now appears to be redundant.

### **Chapter VI - Miscellaneous**

#### **Article 43 (Waiving opposition)**

If a party, knowing that a provision of the arbitration agreement or the Rules was not respected, does not express opposition immediately or within the established

time limit, if applicable, it is considered that the right to do so and the right to set aside the arbitral award on those grounds is waived.

**Note:** New precept. The introduction of this new rule is proposed in line with article 46(4) of the LVA in order to hold parties responsible and protect the integrity of the arbitration process.

#### **Article 44** **(Agreements on time limits in proceedings)**

The parties may agree to modify the time limits established in the Rules but, in the event of such agreement being reached after the arbitral tribunal has been constituted, it shall only take effect with the agreement of the arbitrators.

**Note:** Corresponds, with amendments, to former article 41. More flexibility is proposed to allow the parties to modify the time limits and not only reduce them.

#### **Article 45** **(Summons, notifications and communications)**

1 – Summons, notifications and communications shall be made by any means which provide proof of receipt, namely by registered letter, delivery against receipt, facsimile, email or any other equivalent electronic method.

2 – Until the arbitral tribunal is constituted, when it is not possible to send communications via electronic methods or to present them in digital form, all communications are presented to the Secretariat in as many copies as there are intervening parties in the arbitral proceedings, plus a copy for each arbitrator and a copy for the Arbitration Centre Secretariat.

3 – After the arbitral tribunal is constituted, and without prejudice to the rules established by the arbitral tribunal, all pleadings and requests and accompanying documents, as well as other communications with the tribunal, shall be transmitted by the parties to all members of the arbitral tribunal, to all the parties and to the Secretariat by any of the channels provided for in paragraph 1, and these communications shall be valid as notifications.

**Note:** Corresponds, with amendments, to former articles 42 and 43. It is clarified that after the arbitral tribunal is constituted, it is the parties (and not the Secretariat) that notify each other and send communications to the members of the arbitral tribunal.

#### **Article 46**

### **(Counting of time limits)**

1 – All time limits foreseen in these Rules shall run continuously.

2 – Time limits shall commence on the working day following that on which the summons, notifications and communications are deemed to have been received, by any of the means provided for in the preceding article.

3 – Time limits that end on a Saturday, Sunday or bank holiday are transferred to the following working day.

4 – Time limits for performing any act that is not provided for in the Rules and is not the result of the will of the parties is ten days, without prejudice to the possibility of extension by the Chairman of the Centre or the arbitral tribunal, as applicable.

**Note:** Corresponds, with amendments, to former article 44. A new paragraph is introduced clarifying the uncertainty that arose in the 2008 Rules, determining that if a time limit ends on a weekend or bank holiday, it is transferred to the next working day. It is further clarified that the Chairman of the Centre or the arbitral tribunal, depending on the case in question, may always extend time limits.

### **Article 47 (Archives)**

1 – The Secretariat shall keep the originals of arbitral awards for each arbitration submitted to the Commercial Arbitration Centre under these Rules in the Centre's archives, and parties may obtain certified copies of them.

2 – The pleadings, documents, communications and correspondence relating to each case shall be destroyed twelve months after the date of notification of the final award, unless any of the parties requests their return, in writing, within such period of time.

**Note:** Corresponds, with harmonised terminology, to former article 45. The time limit for the archives is increased from six to twelve months.

## **Chapter VII - Arbitration costs**

### **Article 48**



### **(Arbitration costs)**

1 – Costs shall be payable for arbitration proceedings.

2 – The arbitration costs comprise the arbitrators' fees and expenses, the administrative costs of the proceedings and the expenses incurred in the production of evidence.

3 – It is the arbitral tribunal's responsibility, unless the parties otherwise agree, to decide the method of apportioning the arbitration costs, having regard to all the circumstances of the case, including amount of dismissed claims and the behaviour of the parties during proceedings.

**Note:** Corresponds to former article 46. A new paragraph 3 is introduced that clarifies that the behaviour of the parties during proceedings may be taken into account by the tribunal in its decision on apportionment of costs.

### **Article 49**

#### **(Costs of the arbitration and calculation of costs)**

1 – It is the arbitral tribunal's responsibility, after consulting the parties, to define the costs of the arbitration, bearing in mind the corresponding value of the claims made by the parties and any possible requests for interim measures and preliminary orders.

2 – It is the Secretariat's responsibility to calculate the costs of the arbitration and the amount of the advances to be paid by the parties, taking into account the costs of the arbitration defined by the arbitral tribunal or, if the tribunal has not yet done so, a provisional estimate of the value of the arbitration.

**Note:** Corresponds, with amendments, to former article 47. It is clarified that responsibility for calculating costs belongs to the Secretariat. Compared with the preliminary draft, it is also established that determining the value of the arbitration is the responsibility of the Arbitral Tribunal.

### **Article 50**

#### **(Arbitrators' fees)**

1 – The fees of each arbitrator is established by the Chairman of the Arbitration Centre bearing in mind the value of the arbitration, in accordance with Table 1 annexed to the Rules, and the following paragraphs.

2 – If the arbitral tribunal is constituted by a sole arbitrator, the fees shall be increased up to a maximum of 50% of the values indicated in the table mentioned in paragraph 1.

3 – When the arbitral tribunal comprises three arbitrators, the total fees due to them shall correspond to three times the amount established under paragraph 1, 40% of such total being due to the presiding arbitrator and 30% to each of the other two arbitrators, unless otherwise agreed between the arbitrators.

4 – When establishing the fees, after consulting the parties and the arbitral tribunal, the Chairman of the Arbitration Centre, considering the circumstances of the case in question and, in particular, the swiftness and efficiency of the tribunal in conducting proceedings, as well as the complexity of the proceedings and the time spent by the arbitrators, may decrease to 60% or increase remuneration by a further 40% of the value resulting from the table mentioned in paragraph 1.

5 – If the arbitration ends before the final award, the Chairman of the Arbitration Centre may, after consulting the parties and the arbitral tribunal and taking into consideration, as well as the aspects referred to in the previous paragraph, the stage at which the arbitral proceedings ended or any other circumstance considered relevant, reduce the fees to 30% of the value resulting from the table mentioned in paragraph 1, if the arbitration ends before the preliminary hearing, and to 50%, if the arbitration ends before the final hearing begins.

**Note:** Corresponds, with amendments, to former article 48. Several amendments were made to the text in the preliminary draft in order to allow the Chairman of the Arbitration Centre to decrease or increase the arbitrators' fees, within a relatively small range, depending on the characteristics of each case. The criteria for reducing fees if proceedings end before the final award have also been consolidated.

## **Article 51 (Arbitrators' expenses)**

The arbitrators' expenses shall be paid in accordance with the actual cost incurred, duly substantiated.

**Note:** Corresponds, with amendments, to former article 49.

**Article 52**  
**(Administrative costs)**

1 – The administrative costs of the arbitral proceedings are established by the Chairman of the Centre bearing in mind the value of the arbitration, according to table 2 annexed to the Rules, and the following paragraphs.

2 – When establishing the costs, after consulting the parties and the arbitral tribunal, considering the circumstances of the case in question and, in particular, the services provided by the Arbitration Centre, the Chairman of the Arbitration Centre may decrease to 80% or increase costs by a further 20% of the value resulting from the applicable table.

3 – Administrative costs include all the Centre's decisions laid down in the Rules, administrative support, management of the proceedings and use of the hearing rooms in the Centre's headquarters.

4 – On submitting the Request for Arbitration, the claimant shall pay a fixed amount equal to the lowest band in table 2, which shall be credited against payment of the arbitration costs.

5 – Payment of the amount referred to in the preceding paragraph is a condition for notification of the respondent and is not re-fundable in the event the arbitration does not, for any reason, proceed.

6 – If the arbitration ends before the final award, the Chairman of the Centre may reduce the administrative costs, taking into consideration the stage at which the arbitral proceedings ended or any other circumstance considered relevant, under the terms corresponding to the reduction of the arbitrators' fees.

**Note:** Corresponds, with amendments, to former article 50, also allowing the Chairman of the Arbitration Centre to decrease or increase costs, within a smaller range, depending on the services actually provided by the Centre.

**Article 53**  
**(Expenses relating to the production of evidence)**

Expenses relating to the production of evidence shall be determined on a case-by-case basis, in view of the actual costs incurred.

**Note:** Corresponds to former article 51.

**Article 54**  
**(Advance on arbitration costs)**

- 1 – The parties shall pay an advance to guarantee payment of the arbitration costs.
- 2 – Before the arbitral tribunal is constituted, an initial provisional advance shall be paid by each of the parties, of an amount to be determined by the Secretariat, corresponding to no more than 35% of the likely arbitration costs.
- 3 – In the course of the proceedings, the Secretariat shall collect further advances, one or more times, until the total advance covers the likely total arbitration costs.

**Note:** Corresponds, with amendments, to former article 52. A change to the rule on the total amount of the advances is introduced, changing the amount to 100% of the total and not 200% as in previous Rules.

**Article 55**  
**(Advances: time limits and penalties)**

- 1 – Advances shall be paid within ten days of notification for this purpose.
- 2 – In the event of an advance failing to be paid within the established time limit, the Secretariat may establish a new time limit for payment to be made by the non-complying party and may, if the situation continues, notify the other party of the fact so that, if it sees fit, it may pay the outstanding advance within ten days.
- 3 – If the initial advance is not paid, the arbitration shall not proceed, and the arbitral proceedings shall be deemed to have ended; if it is the respondent that has failed to pay, the arbitration shall proceed, and the tribunal may determine inadmissibility of the answer.
- 4 – In the event of non-payment of an advance requested to cover the cost of the production of evidence or other inquiry, the tribunal shall not proceed with such measure.
- 5 – Non-payment of any subsequent advance shall cause the arbitral proceedings to be suspended, in the event of non-payment by the claimant; in the event of such non-payment by the respondent, the arbitral tribunal may bar respondent from taking part in the production of evidence or submitting statements.
- 6 – If the suspension of arbitral proceedings mentioned in the preceding paragraph persists for a period of more than thirty days without payment of the missing advance, the arbitral tribunal may determine that the arbitral proceedings have ended, dismissing the respondent from the proceedings without prejudice.

7 – If the respondent makes counterclaims, the Secretariat may, upon request by any of the parties, establish separate advances for each claim, and the provisions of the previous paragraphs shall apply with the necessary adaptations.

8 – Through a reasoned request from any of the parties, the time limits laid down in this article may be extended by the Secretariat.

**Note:** Corresponds, with amendments, to former article 53. Some flexibility is introduced in terms of the time limits and penalties for payment of advances, as well as the possibility of ending the arbitral proceedings if the claimant does not pay the advance. Compared with the text of the preliminary draft, it introduces the possibility for the Secretariat to grant a new time limit for payment of the advance before the penalties established here are applied (see article 17(4) of the LVA).

### **Article 56 (Assessment of costs)**

1 – When the arbitration costs have been assessed and the parties notified of the same, they may contest the calculations within ten days by notifying the Secretariat.

2 – If the Secretariat deems that no changes are required to the assessment of costs, it shall draw up a report, which it shall submit, with the complaint, to the arbitral tribunal.

3 – If it is no longer possible for the arbitral tribunal to convene, the matter shall be decided by the Chairman of the Centre.

**Note:** Corresponds to former article 54.

## **Chapter VIII – Final and transitional provisions**

### **Article 57 (Entry into force)**

1 – The Rules of arbitration enter into force on 1 March 2014, and apply to arbitrations requested after such date, unless the parties have agreed to apply the rules in force at the date of the arbitration agreement.

2 – The procedure for Emergency Arbitration, however, shall only apply in cases where the arbitration agreement has been concluded after these Rules have entered into force.

3 – Application of part or all of these Rules to arbitration proceedings underway at the date on which they enter into force shall require the agreement of the parties and the acceptance of the arbitral tribunal, if already constituted.

| TABLE NO. 1              |    |                  |                  |                            |               |
|--------------------------|----|------------------|------------------|----------------------------|---------------|
| FEES FOR EACH ARBITRATOR |    |                  |                  |                            |               |
| Value of dispute         |    |                  | Fees             |                            |               |
| Up to 50,000.00          |    |                  | 2,500.00         |                            |               |
| 50,001.00                | to | 100,000.00       | 2,500.00+3.50%   | of the amount in excess of | 50,000.00     |
| 100,001.00               | to | 250,000.00       | 4,250.00+2.50%   | of the amount in excess of | 100,000.00    |
| 250,001.00               | to | 500,000.00       | 8,000.00+1.25%   | of the amount in excess of | 250,000.00    |
| 500,001.00               | to | 1,000,000.00     | 11,125.00+0.8%   | of the amount in excess of | 500,000.00    |
| 1,000,001.00             | to | 2,500,000.00     | 15,125.00+0.7%   | of the amount in excess of | 1,000,000.00  |
| 2,500,001.00             | to | 5,000,000.00     | 25,625.00+0.5%   | of the amount in excess of | 2,500,000.00  |
| 5,000,001.00             | to | 10,000,000.00    | 38,125.00+0.25%  | of the amount in excess of | 5,000,000.00  |
| 10,000,001.00            | to | 20,000,000.00    | 50,625.00+0.15%  | of the amount in excess of | 10,000,000.00 |
| 20,000,001.00            | to | 40,000,000.00    | 65,625.00+0.09%  | of the amount in excess of | 20,000,000.00 |
| 40,000,001.00            | to | 80,000,000.00    | 83,625.00+0.075% | of the amount in excess of | 40,000,000.00 |
| 80,000,001.00            | to | 120,000,000.00   | 113,625.00+0.05% | of the amount in excess of | 80,000,000.00 |
|                          |    | > 120,000,000.00 | 133,625.00       |                            |               |

| TABLE NO. 2          |    |                  |                      |                            |               |
|----------------------|----|------------------|----------------------|----------------------------|---------------|
| ADMINISTRATIVE COSTS |    |                  |                      |                            |               |
| Value of dispute     |    |                  | Administrative costs |                            |               |
| Up to 50,000.00      |    |                  | 2,500                |                            |               |
| 50,001.00            | to | 100,000.00       | 2,500.00+2.25%       | of the amount in excess of | 50,000.00     |
| 100,001.00           | to | 250,000.00       | 3,625.00+2.00%       | of the amount in excess of | 100,000.00    |
| 250,001.00           | to | 500,000.00       | 6,625.00+0.6%        | of the amount in excess of | 250,000.00    |
| 500,001.00           | to | 1,000,000.00     | 8,125.00+0.3%        | of the amount in excess of | 500,000.00    |
| 1,000,001.00         | to | 2,500,000.00     | 9,625.00+0.125%      | of the amount in excess of | 1,000,000.00  |
| 2,500,001.00         | to | 5,000,000.00     | 11,500.00+0.1%       | of the amount in excess of | 2,500,000.00  |
| 5,000,001.00         | to | 10,000,000.00    | 14,000.00+0.06%      | of the amount in excess of | 5,000,000.00  |
| 10,000,001.00        | to | 20,000,000.00    | 17,000.00+0.05%      | of the amount in excess of | 10,000,000.00 |
| 20,000,001.00        | to | 40,000,000.00    | 22,000.00+0.04%      | of the amount in excess of | 20,000,000.00 |
| 40,000,001.00        | to | 80,000,000.00    | 30,000.00+0.03%      | of the amount in excess of | 40,000,000.00 |
| 80,000,001.00        | to | 120,000,000.00   | 42,000.00+0.02%      | of the amount in excess of | 80,000,000.00 |
|                      |    | > 120,000,000.00 | 50,000.00            |                            |               |

## APPENDIX I – RULES ON EMERGENCY ARBITRATORS

### Article 1 (Application for Emergency Arbitrator)

1 – The party that intends to request an emergency arbitrator under the Rules of Arbitration shall present an Application for Emergency Arbitrator to the Secretariat.

2 – The Application for Emergency Arbitrator shall include, at least, the following elements:

- a) The full names of the parties, their addresses and email addresses;
- b) A brief description of the dispute;
- c) Description of the required interim measures;
- d) Description of the reasons for which the requested interim measures are urgent;
- e) Description of the reasons for which the applicant believes it holds the right to the protection it requests;
- f) Description of any relevant contracts and, in particular, of the arbitration agreement;
- g) Description of any agreement relating to the arbitral proceedings or the applicable rules of law.

3 – The Application shall be accompanied by the following documents:

- a) The arbitration agreement;
- b) If it has already been presented, the Request for Arbitration and other correspondence relating to the main dispute that has been submitted to the Secretariat by any of the parties prior to presentation of the Application for Emergency Arbitrator;
- c) The documentary evidence of the facts put forward in the Application for Emergency Arbitrator;
- d) Proof of payment of the advance for costs relating to the emergency arbitrator.

**Note:** The application for emergency arbitrator shall contain all the elements necessary for consideration by the Emergency Arbitrator.



**Article 2**  
**(Consideration of the Application for Emergency Arbitrator by the Chairman of the Centre)**

1 – The Chairman of the Centre shall outright reject the Application for Emergency Arbitrator in the following situations:

- a) Inadmissibility of use of an emergency arbitrator under the Rules of Arbitration;
- b) Non-payment of the advance for the costs of the proceedings;
- c) Lack of an arbitration agreement that assigns the Arbitration Centre jurisdiction to administrate it;
- d) When the arbitration agreement is manifestly null and void or if there is manifest incompatibility of the arbitration agreement with the non-derogable provisions of the Rules of Arbitration.

2 – If there is an outright rejection, the Secretariat notifies the applicant that the proceedings shall not proceed.

3 – If the Application for Emergency Arbitrator is not rejected outright, the Secretariat shall immediately transmit a copy of the application and accompanying documents to the responding party, at the same time notifying the applicant.

**Note:** The Chairman of the Centre shall make a preliminary consideration of the Application for Emergency Arbitrator and, in the cases provided for in paragraph 1, may refuse the application outright. In principle, consideration by the Chairman of the Centre shall focus on checking the formal requirements; however, due to the referral as a whole to article 5, the possibility of the Chairman refusing it outright for considering it not be an urgent matter cannot, in exceptional cases, be disregarded.

**Article 3**  
**(Relationship with the arbitral proceedings)**

1 – The applicant shall present the Request for Arbitration within fifteen days, counted from the presentation of the Application for Emergency Arbitrator, unless this limit is extended for a period of up to thirty days by the emergency arbitrator or by the Chairman of the Centre, until the Emergency Arbitrator is appointed;

2 – If the Request for Arbitration is not presented within the time limits referred to in the previous paragraph, the Chairman of the Centre deems the emergency arbitrator proceedings to have ended.

**Note:** The ICC and Swiss Chambers rules establish a time limit of 10 days for presenting a Request for Arbitration (although this is counted from notification by the Secretariat that the request was not rejected outright). The Stockholm Chamber rules establish a time limit of 30 days. The time limit of 15 days was chosen (which, in any case, the applicant does not need to exhaust), which may be extended by the emergency arbitrator.

#### **Article 4 (Emergency Arbitrator)**

1 – The Chairman of the Centre shall appoint the emergency arbitrator in the shortest time-limit possible and, in any case, within two days counted from receipt, by the Secretariat, of the Application for Emergency Arbitrator.

2 – The Chairman of the Centre shall not appoint an emergency arbitrator if the arbitral tribunal has already been constituted.

3 – The emergency arbitrator shall have the same statute, and shall be subject to the same duties and hold the same rights, as the arbitrators appointed under the Rules of Arbitration.

4 – The provisions of the Rules of Arbitration shall apply on matters of challenge of arbitrators; the time limits for presenting a challenge and possible opinions from the opposing party and the emergency arbitrator are reduced to three days.

5 – The emergency arbitrator cannot act as an arbitrator in any arbitration relating to the dispute underlying the Application for Emergency Arbitrator, unless the parties otherwise agree.

6 – Once the emergency arbitrator has been appointed, the Secretariat notifies the parties and immediately sends the emergency arbitrator the proceedings.

**Note:** In light of the urgent nature of the proceedings, short time limits are established for appointing the arbitrator (2 days) and any possible challenge (3 days). With agreement from the parties, there does not appear to be any obstacle to the emergency arbitrator acting as arbitrator (along the same lines, for example, as the rules of the Stockholm Chamber, Swiss Chambers and Singapore Arbitration Centre. The rules of the ICC differ).

**Article 5**  
**(Place of the Emergency Arbitrator Proceedings)**

1 – The place of the emergency arbitrator proceedings shall be the same as the place of the arbitration and, in the absence of an agreement between the parties, the Chairman of the Centre shall decide on the place of the emergency arbitrator proceedings, without prejudice to the determination of the place of the arbitration by the arbitral tribunal under the Rules of Arbitration.

2 – Irrespective of the place of the emergency arbitrator proceedings, the emergency arbitrator may, on his or her initiative or upon request by any of the parties, hold sessions, hearings and meetings, allow any evidentiary measure or make any deliberations in any other place.

**Note:** Similar text to that of the Rules of the ICC and Swiss Chambers.

**Article 6**  
**(Proceedings)**

1 – The emergency arbitrator may conduct the proceedings in such a way as deemed appropriate, taking into account the nature and the special urgency of the proceedings and giving the parties a reasonable opportunity to assert their rights.

2 – Within the time limit of two days counting from referral of the proceedings by the Secretariat, the Emergency Arbitrator shall establish a provisional procedural timetable for the proceedings, which shall include the possibility for the responding party to present its case on the request presented by the applicant and the date of the time limit for a decision to be issued.

**Note:** Broad powers are assigned to the emergency arbitrator to direct the proceedings. However, the respondent must be heard, under terms defined by the emergency arbitrator, and it will certainly involve a short time limit (and it is certain that the respondent shall be aware of the Application for Emergency Arbitrator before the Emergency Arbitrator is appointed), since the overall time limit for the award is 15 days.

**Article 7**  
**(Time limit for the decision to be issued)**

1 – Save for the provisions of the following paragraphs, the emergency arbitrator's decision shall be issued within fifteen days, counting from the date on which the proceedings were transmitted to the emergency arbitrator or the date on which the responding party was notified of the Application for Emergency Arbitration, if later.

2 – The Chairman of the Centre may, upon reasoned request from the emergency arbitrator or on his or her own initiative, set a longer time limit.

3 – In any case, the parties may agree on a longer time limit.

**Note:** The time limit of 15 days is common to the rules of the ICC, the Swiss Chambers, CEPANI (the rules of the Stockholm Chamber establish a time limit of 5 days) and it is consistent with the urgency underlying these proceedings. The Chairman of the Centre may, however, extend the time limit, and this may also be allowed through an agreement between the parties.

### **Article 8 (Decision)**

1 – The decision of the emergency arbitrator shall be rendered in writing and shall include:

- a) The identification of the parties;
- b) Reference to the arbitration agreement;
- c) The identification of the emergency arbitrator and of the form of the emergency arbitrator's appointment;
- d) A brief explanation of the reasoning of the decision, including in respect of the admissibility of the Application for Emergency Arbitrator;
- e) Indication of jurisdiction for deciding on requested the interim measures;
- f) The apportionment of the arbitration costs among the parties, including, if applicable, ordering the payment;
- g) Indication of the place of arbitration and the place and date on which the decision was issued;
- h) his or her signature.

2 – The emergency arbitrator may make the decision subject to any measures considered to be appropriate, including appropriate security being provided by the applicant.

### **Article 9 (Effects of the decision)**

1 – The decision made by the emergency arbitrator shall be binding on all parties.

2 – The decision made by the emergency arbitrator shall cease to be binding on all parties when:

- a) The Chairman of the Centre terminates the emergency arbitrator proceedings under these Rules;
- b) The Request for Arbitration is not presented within the time limit established in these Rules;
- c) A period of one hundred and twenty days has elapsed since the decision and the arbitral tribunal has not been constituted, for reasons not caused by the responding party;
- d) A challenge against the emergency arbitrator is upheld;
- e) The arbitral tribunal renders the final award, unless the arbitral tribunal decides otherwise in said final award;
- f) For any reason, the arbitration ends before the final award is rendered.

**Note:** Along the lines of the rules of the Stockholm Chamber, the Emergency Arbitrator's decision ceases its effects not only when the request for arbitration has not been presented within the time limit (15 days), but also when, for reasons not caused by the respondent, the arbitral tribunal is not constituted within 120 days (in the Stockholm Chamber, the time limit is 90 days). Although it is a situation unlikely to occur, and it may not be caused by the claimant, the precarious nature of the decision suggests that, if such a situation were to take place, the respondent's position shall take priority, unless the reason for the lack of constitution of the tribunal is caused by respondent.

## **Article 10 (Costs)**

1 – Costs shall be payable for the emergency arbitrator proceedings; provisions on the matter in the Rules of Arbitration shall apply with due adaptations, considering the special provisions in the following paragraphs.

2 – The emergency arbitrator's fees are set by the Chairman of the Centre, bearing in mind the circumstances of the case in question, in up to 15,000 euros.

3 – The administrative costs of the emergency arbitrator proceedings shall be of 3,000 euros, which shall not be refundable if the proceedings do not proceed for any reason.

4 – To guarantee payment of the costs of emergency arbitrator proceedings, the applicant shall pay, when presenting the application, an advance of 18,000 euros.

5 – Once the parties have been consulted, the Chairman of the Centre, taking into account the circumstances and, in particular, the complexity of the case in question and the time spent by the emergency arbitrator, may increase the amount of the emergency arbitrator's fees and/or the administrative fees up to double the amounts referred to in the previous paragraphs.

6 – In the case provided for in the previous paragraph, the applicant is called upon to increase the advance in the amount necessary to meet all of the costs of the proceedings, under penalty of the proceedings not proceeding and the Chairman of the Centre dismissing them.

7 – The method for apportioning the costs of the emergency arbitrator proceedings shall be decided by the emergency arbitrator in the final decision, without prejudice to the possibility of modification by the arbitral tribunal.

**Note:** It is proposed, in line with most rules, that a fixed amount of costs is set, advanced entirely by the applicant, which facilitates and considerably speeds up the initial steps in the proceedings.

### **Article 11 (Final provision)**

For anything not specifically provided for in this appendix, the provisions of the Rules of Arbitration shall apply, with due adaptations, and it shall be the responsibility of the Chairman of the Centre to decide on any incidents that arise before appointment of the emergency arbitrator that are not expressly provided for in this appendix.