

2019

**CODE OF BEST  
PRACTICES IN  
ARBITRATION  
OF THE SPANISH  
ARBITRATION CLUB**

**cea**

Club Español del Arbitraje

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**A.**

## **PREAMBLE**

# 1. INTRODUCTION

## 1. Background to the present Code

The present Code of Best Practice (“CBP”) is intended to update and complete the Code of Best Arbitration Practices published by the Club Español del Arbitraje [Spanish Arbitration Club] (“CEA”) in 2005 (the “2005 Code”), which addressed this topic over a decade ago. There is however a significant difference: the 2005 Code was aimed exclusively at arbitral institutions, while the present CBP contains recommendations not only for arbitral institutions, but for all professionals participating in the arbitration process: arbitrators, lawyers, experts and funders.

## 2. Rationale

The 2005 Code had undeniably positive effects. It constituted a step forward. But new situations and challenges have arisen which could not have been foreseen in 2005. Furthermore, international experience shows that arbitration users desire that all participants in the arbitration process abide by increasingly demanding standards of independence, impartiality, transparency and professionalism. Mindful of these new demands, the CBP seeks to raise the standards of conduct even further, in order to definitively consolidate society’s confidence in arbitration.

## 3. Drafting Procedure

The CBP is divided into six sections and four annexes:

- » Section One: Arbitral Institutions
- » Section Two: Arbitration Process
  - Annex A: CEA Model Arbitration Rules
  - Annex B: Model Arbitration Clause
- » Section Three: Duties of the Arbitrators
  - Annex C: Model for Arbitrator Acceptance
- » Section Four: Duties of Lawyers
- » Section Five: Duties of Experts
  - Annex D: Model for Expert Acceptance
- » Section Six: Duties in Relation to Funding

Each section was drafted by a subcommittee which answered to the Committee.

The Committee was presided by Juan Fernández-Armesto and Carlos de los Santos. Secretarial duties were performed by Krystle M. Baptista.

Each subcommittee defined its own work methodology, including the designation of a spokesperson and the appointment of a secretary, and involved as many members and advisors as deemed appropriate. The subcommittees met on repeated occasions, and after finalising their work, presented their proposals to the Plenary Committee for consolidation and harmonisation.

Before its final approval, the draft CBP was subject to a consultation process which involved all Club members, arbitration associations and arbitral institutions.

#### **4. Nature of the Rules**

The CBP is a set of “soft rules”: a compilation of the recommendations which the CEA offers to the entire law arbitration community. It sets forth the rules which, in the Club’s opinion, should be followed by arbitral institutions, arbitrators, lawyers, experts and funders. However, the rules are not binding unless parties decide otherwise in the arbitration agreement or in the arbitral proceedings.

## **2. ARBITRAL INSTITUTIONS**

### **1. Introduction**

Arbitral institutions play a fundamental role in the promotion, performance and legitimacy of arbitration. On the one hand, they are service providers – organising and administering the arbitration process while applying the principles of independence, impartiality, transparency, professionalism, efficacy and cost efficiency. On the other, they support the task of arbitration – ensuring due process and the fairness of awards.

### **2. Delegated Subcommittee**

The Subcommittee was presided by José Ricardo Feris, with Patricia Saiz as secretary, and involved the following members:

- » José María Alonso
- » David Arias
- » José Antonio Caínzos
- » Luis Cordon
- » Yves Derains
- » Diana Droulers
- » Mercedes Fernández

- » Javier González-Guimaraes
- » Javier Gutiérrez de Cabiedes
- » Elena Gutiérrez García de Cortázar
- » Fernando Lanzón
- » Jesús Remón
- » Mélanie Riofrío Piché
- » Nazareth Romero
- » Patrizia Sangalli
- » Vicente Sierra
- » María Inés Sola
- » Mercedes Tarrazón
- » Juliana de Ureña
- » Adriana Vaamonde
- » Miguel Virgós

The subcommittee was advised by the following Expert Committee:

- » Manuel Conthe (Spanish Court of Arbitration)
- » Rafael Espino Rierola (Barcelona Arbitration Court)
- » Javier Íscar (European Association of Arbitration)
- » José Ángel Martínez Sanchiz (Signum Foundation)
- » Antonio Sánchez Pedreño (Court of Arbitration of Madrid)
- » Juan Serrada and Gonzalo Stampa (Civil and Mercantile Court of Arbitration)

### **3. Drafting Procedure**

These recommendations have been prepared on the basis of:

- » Contributions received from the members of the Expert Committee;
- » Interviews conducted with various international and regional arbitral institutions;
- » Comments from subcommittee members provided in face-to-face meetings and in writing;
- » Comments from CEA members; and
- » The guidelines set by the Committee.

### **4. Materials Consulted**

These recommendations are informed by doctrine and precedent on good governance of arbitral institutions, together with the rules of various national, regional and international arbitral institutions, as well as the recommendations included in the 2005 Code.



## 5. Explanation of the Recommendations

These recommendations address questions relating to the governance, structure, functioning and mission of arbitral institutions, with a particular focus on ensuring their transparency and independence. While the recommendations allow for some flexibility, they establish certain minimum guarantees that should be observed by any organisation wishing to operate as an arbitral institution.

# 3. ARBITRAL PROCEDURE

## 1. Introduction

The CEA's principal recommendation is that all Institutions be asked to adopt a set of Rules aligned with the Model that is attached hereto as Annex A. The adoption of identical (or at least very similar) Rules by all Institutions will increase the predictability, and consequently the legal certainty, that arbitration offers to its users. Different sets of rules with differing solutions for analogous situations increase confusion, causes unintentional errors, and undermines confidence in the arbitration process.

## 2. Delegated Subcommittee

The task of drafting the Model Rules was delegated to a subcommittee presided by:

- » José Antonio Caínzos
- » Antonio Hierro
- » Jesús Remón

The secretary of the subcommittee was Luis Gómez Iglesias.

The members of the subcommittee were:

- » Luis Felipe Castresana
- » Seguimundo Navarro
- » Nazareth Romero
- » Mercedes Tarrazón
- » Juliana de Ureña

### 3. Drafting Procedure

In drafting the Model Rules, the subcommittee proceeded on the basis of the model proposed in the 2005 Code, and identified those aspects which required revision, in order to align it with the latest trends and to resolve issues which have arisen in practice. Accordingly, we seek to provide the arbitration community with model Rules that have been reformulated in accordance with the most up-to-date developments both in Spain and internationally.

### 4. Materials Consulted

In order to identify those aspects requiring review and updating, the subcommittee consulted the rules of the principal national and international arbitral institutions, the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Arbitration Rules, in addition to doctrinal writings dealing with the arbitral process.

## 4. DUTIES OF ARBITRATORS

### 1. Introduction

Arbitrators are key to ensuring good outcomes in arbitration. Their mission is to resolve disputes by applying the procedural and substantive rules that apply in each case. The trust that they will fulfil their mission with impartiality and independence, without favouritism toward any of the parties, is essential for arbitration to be showing as a true system of justice.

### 2. Delegated Subcommittee

The Subcommittee was presided by Alfonso Gómez-Acebo, with Margarita Soto as secretary, and contained the following members:

- » José Daniel Amado
- » Juan Fernández-Armesto
- » Julio González-Soria
- » Elena Gutiérrez García de Cortázar
- » Patrizia Sangalli
- » Claudia Senatore
- » María Vicien Milburn

### 3. Drafting Procedure

These recommendations have been prepared in light of the contributions made by the Subcommittee members and the Plenary Committee.

### 4. Materials Consulted

The Subcommittee has consulted:

- » Sources of legislation, precedent and theory in comparative law;
- » Standards and recommendations of the principal arbitral institutions; and
- » The principal guidelines published on the subject, including the Code of Ethics for International Arbitrators of the International Bar Association (“IBA”, 1987), the Code of Ethics of the American Arbitration Association (2004), the IBA Guidelines on Conflicts of Interest in International Arbitration (2004), the Chartered Institute of Arbitrators (“CI Arb”) Guideline on the Interviewing of Prospective Arbitrators (2007, revised 2016), the CEA Recommendations on the Independence and Impartiality of Arbitrators (2008), the IBA Guidelines on Conflicts of Interest in International Arbitration (revised 2014), and the Guidance Note on Disclosure which the International Court of Arbitration of the International Chamber of Commerce (“ICC”) included in its Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration (2016).

### 5. Explanation of the Recommendations

The principal aspiration behind the recommendations is to contribute to a more uniform understanding of the duties of arbitrators, and thereby serve to assist all those who, in one way or another, are responsible for determining the content and scope of those duties: the end-users of arbitration, the arbitrators themselves, and the arbitral institutions and judicial bodies whose role is to support and oversee the arbitral process.

The recommendations are suggestions of best practice. Many of these suggestions substantially coincide with those previously made by other entities. Various recommendations, however, differ from others that have come before. The principal reason for these differences is the subcommittee’s understanding of the desirability for a greater level of transparency in arbitration.

The subcommittee has also felt it appropriate to include some recommendations with regard to issues which previously lacked any clear guideline.

# 5. DUTIES OF LAWYERS

## 1. Introduction

The CBP assumes that in an arbitral proceeding the parties will be represented by lawyers who, particularly in international arbitrations, may be subject to different rules of ethics. Moreover, the ethical rules in the seat or place of the arbitration, and in the country in which the hearings are physically held, may also be of relevance.

The consequence of all the above is a situation of potential asymmetry and confusion.

There is an additional difficulty: in general the ethical rules of the legal profession lack specific norms for arbitration, which creates gaps and uncertainties.

Accordingly, over the last decade there have been valuable contributions in the quest for harmonised standards of conduct for those who represent the parties in international arbitrations. Not all of the proposals have proven equally successful, and some have received harsh criticism, but all contain elements of value.

This section aspires to reflect the minimum ethical standards with which lawyers in the vast majority of jurisdictions identify. Therefore, it seeks to codify certain common and inalienable values which will ideally regulate the conduct of lawyers who act on behalf of parties in arbitrations, independently of the ethical rules that may apply to them through their respective bar associations.

## 2. Delegated Subcommittee

The subcommittee was presided over by:

- » José María Alonso
- » Alfonso Iglesia
- » Álvaro López de Argumedo
- » Urquiola de Palacio

The subcommittee secretaries were:

- » Lucía Montes
- » Jesús Saracho

The remaining subcommittee members were:

- » César Cervera
- » Julio González-Soria
- » Marina Pozas
- » Ignacio Santabaya
- » Claudia Senatore

### **3. Drafting Procedure**

These recommendations have been prepared on the basis of the documents collated by the subcommittee, the drafts presented by the secretaries for consideration by all subcommittee members, the comments received from the subcommittee members both in face-to-face meetings and in writing, and the guidelines discussed and agreed upon by the Committee.

### **4. Materials Consulted**

The most relevant references used by this subcommittee are listed below:

- » The rules and notes of the principal national and international courts of arbitration;
- » The guidelines and recommendations issued by the principal national and international organisations (IBA Guidelines on Party Representation in International Arbitration (25 May 2013); the CEA Recommendations on Arbitrator Independence and Impartiality (23 October 2008) and the Turin Principles of Professional Conduct for the Legal Profession in the 21st Century, prepared by the International Union of Lawyers (27 October 2002)); and
- » The Code of Conduct for Spanish Lawyers (1 January 2003) and the Code of Conduct for European Lawyers (28 October 1988).

### **5. Explanation of the Recommendations**

The CEA recommendations addressed to lawyers are inspired by the principles of decency, integrity and honesty: lawyers must do everything possible for proceedings to be conducted in an expeditious and efficacious way; however, this should by no means prevent them from performing their duties fairly and diligently, in rigorous compliance with their ethical obligations.

## 6. DUTIES OF EXPERTS

### 1. Introduction

The Disputes being resolved through arbitration display an increasing legal, technical and financial complexity. The participation of experts appointed by the parties (and to a much lesser extent, by the arbitrators) is commonplace. The ultimate aim of this section is to define a series of duties with which experts must comply to reinforce the objectivity and independence of their opinions, thereby increasing the probative value of their expert assessments and contributing to greater procedural efficiency.

These duties are incumbent upon all experts, whether appointed by the parties or by the arbitrators, since no distinction is made between the obligations applying to one group or the other.

### 2. Delegated Subcommittee

The subcommittee was presided over by:

- » Jesús Almoguera
- » María José Menéndez

The secretaryship was occupied by Vicente Español Casamayor.

The subcommittee was assisted by the following advisory committee:

- » Enrique Abiega
- » Juan Arenas
- » Óscar Arnedillo Blanco
- » María Luisa Castrillo Núñez
- » Juan Delgado
- » José Antonio García
- » Manuel García-Ayuso Covarsí
- » José Antonio Laínez Gadea
- » Javier López Andreo
- » Carmen Mencía
- » Juan Monterrey Mayoral
- » Jorge Padilla
- » Diego Perul
- » Isabel Santos Kunsman

### 3. Drafting Procedure

For the drafting of this section, a form was firstly sent out to all of the advisory committee members, that they indicate the duties which, according to their experience, should be imposed upon experts acting in an arbitration proceeding.

Once completed by the advisers and returned, the forms were analysed in detail. The outcomes of that task, together with the materials consulted described further below and the ideas exchanged with the rest of the subcommittees and in the Plenary, constitute the sources from which this subcommittee's proposals are derived.

### 4. Materials Consulted

In drafting its recommendations the subcommittee has taken into account:

- » The guidelines regulating the participation of experts in arbitration proceedings (In particular, the IBA Rules on the Taking of Evidence in International Arbitration (29 May 2010); the CIArb Protocol for the Use of Party Appointed Expert Witnesses in International Arbitration; and the ICC Expert Rules (1 February 2015));
- » National laws that regulate, albeit not in detail, the role of expert witnesses;
- » Theoretical analyses of the duties of expert witnesses in an arbitration proceeding; and
- » Various rules established by arbitral institutions.

### 5. Explanation of the Recommendations

In order to ensure that experts act objectively and independently, the subcommittee has insisted on three key duties:

- » Detailed breakdown of the brief, the information received, and the work methods employed in the expert report, which will facilitate the tribunal's discernment of any possible bias.
- » Disclosure to the arbitrators and the parties of any circumstance that might compromise the expert's independence, impartiality or objectivity.
- » Prohibition against the expert's fees depending on the outcome of the arbitration.

# 7. DUTIES IN RELATION TO FUNDING

## 1. Introduction

The term *Third Party Funding* normally refers to funding provided by funders unrelated to the parties, in order to cover the costs of an arbitration. It is a changing and controversial area, with little (or no) regulation, and differing levels of implementation in the sector.

In an international context where arbitration itself is not free from questioning, the emergence of arbitration funders poses new questions which, if not appropriately addressed, could have a negative impact on how arbitration is generally perceived.

Accordingly, over the last few years and across various areas and jurisdictions there have been a growing number of studies, legislative proposals, and guidelines with a view to regulating the sector.

All the above reinforced the subcommittee's conviction that its task did not consist in making categorisations or defining concepts, nor in theorising (and much less "legislating") upon the subject, but rather in enunciating a series of practical and simple recommendations in a brief and concise way. In view of the sector's rapid development, it is quite conceivable that in a not-so-distant future these recommendations may need to be updated and broadened.

## 2. Delegated Subcommittee

The subcommittee was presided over by:

- » Clifford J. Hendel
- » Joe Tirado

The position of secretary was held by Ángel S. Freire, with the remaining members as follows:

- » Bernardo M. Cremades Román
- » Francisco González de Cossío
- » Julio González-Soria
- » Sally Harpole
- » Duarte G. Henriques
- » Carmen Martínez
- » Olga Puigdemont Sola
- » Renato Stephan Grion



The subcommittee was assisted with advice from the following board:

- » Maddi Apiroz
- » Armando L. Betancor
- » César Cervera
- » Ignacio Delgado
- » Mick Smith
- » Cristina Soler
- » Narghis Torres
- » Antonio Wesolowski

### **3. Drafting Procedure**

The subcommittee worked in four stages to reach a definitive text. In the first stage, the committee members and advisers put forward the best published materials on the subject of best practice best practices of third party funders arbitration funders.

In the second stage a framework document, organised in sections according to the various actors involved in arbitration funding, was circulated amongst the members and advisers, who were invited to propose their advice or recommendations. In the third stage, a schematic draft was circulated among the members and advisers, and a discussion meeting was held.

In the fourth stage, a marked-up draft was prepared by the subcommittee from the preceding schematic draft, and circulated amongst the members and advisors for comment. Finally, after the comments of members and advisers had been received, a proposal for the definitive consensus text was forwarded to the Committee.

### **4. Materials Consulted**

The material collated and submitted to the subcommittee by the members and advisors included legislation, codes, guidelines, notes, articles, recommendations etc., from different institutions and jurisdictions around the world. Among these resources, the following are noteworthy in terms of their scope and currency:

- » Code of Conduct for Litigation Funders published by the Association of Litigation Funders of England and Wales (January 2018);
- » Report of the ICCA Queen Mary Task Force on Third Party Funding in International Arbitration, Chapter 7, Principles of Best Practice (April 2018).
- » Hong Kong Code of Practice for Third Party Funding of Arbitration (December 2018).

## 5. Explanation of the Recommendations

There is one pivotal idea behind section six: the applicability and scope of the duty to disclose funding, in order to protect the independence and impartiality of the arbitrators.

The subcommittee was unanimous in its decision to limit the duty of disclosure, at least for the time being, to the existence and identity of the funder, notwithstanding that arbitrators may request parties to provide any additional information that may be relevant.

### **Form of citation**

It is recommended that the following form be used when citing one of the Recommendations: Rec. [...] C.BB.PP/CEA 2019

**B.**

## **RECOMMENDATIONS**

# I. SECTION ONE: ARBITRAL INSTITUTIONS

## 1. GENERAL PRINCIPLES

### 1.1. Independence

- 1 Every arbitral institution shall perform its functions subject to its bylaws and under the direction and oversight of its bodies. No third party shall participate in, or exercise any influence over, the taking of decisions by said bodies.
- 2 Arbitral institutions may be autonomous or integrated. Autonomous institutions (“Autonomous Institutions”) have legal personality and their principal purpose is the administration of arbitral proceedings. Integrated institutions (“Integrated Institutions”) lack legal personality and form part of larger organisations, such as chambers of commerce or business associations (“Parent Organisation”).
- 3 In Integrated Institutions, the bylaws shall guarantee their functional and organic independence with respect to the Parent Organisation.
- 4 Every Integrated Institution:
  - a) Shall have its own bodies that are independent of the Parent Organisation and whose members have been chosen under its own selection system.
  - b) Shall prepare and approve its budget and its annual accounts, which are to be approved by its bodies.
  - c) Shall freely designate and remove its executives and employees.

### 1.2. Bylaws and Rules

- 5 Arbitral institutions shall be governed by bylaws (the “Bylaws”), which are approved by their governance body (normally known as the “Board” of the institution) or by a general meeting, as applicable.
- 6 Arbitration proceedings administered by the institution shall be subject to a set of rules (the “Rules”), based on the CEA’s recommended Model Rules which are attached hereto as Annex A, and approved by its technical body (normally known as the “Court” of the institution).

- 7 The Rules and the Bylaws, and all regulations or recommendations that develop them, shall be public.
- 8 Amendments the Rules and to the Bylaws shall be prepared by an *ad hoc* committee designated by the Court or by the Board, as applicable, and comprised of members of the different bodies, representatives of end-users, and experts external to the institution. The procedure shall be transparent and inclusive, and shall entail public consultations.

## 2. BODIES

### 2.1. Enumeration

- 9 Every arbitral institution shall have at least the following bodies:
  - a) A governing body or board, responsible for the economic-financial management and good governance of the institution;
  - b) A technical body or court, responsible for adopting the technical decisions necessary for the proper performance of arbitration proceedings, including the appointment of arbitrators;
  - c) A management body, commonly termed “general secretariat”, responsible for the ordinary administration of the proceedings;
  - d) An “appointments committee”, responsible for proposing candidates to fill vacant positions in the remaining bodies.

### 2.2. Council or Government Body

- 10 The Board shall be of a size appropriate to enable its effective functioning, the participation of its members, and the diversity of its make-up. In any case, , it shall have a minimum of five members including its President (the “President of the Board”) and the president of the Court (the “President of the Court”).
- 11 In Integrated Institutions, the Board may consist of a committee of the Parent Organisation’s governing body.
- 12 The functions of the Board shall be to:
  - a) Appoint the President of the Board and the Secretary;
  - b) Approve and amend the Bylaws, upon proposal by the *ad hoc* committee or raise the proposal in a general meeting;
  - c) Define strategy and approve decisions of a strategic nature;
  - d) Approve the objectives of the General Secretariat, and supervise and evaluate its activities;

- e) Design the General Secretariat's remuneration policy, upon proposal by the Secretary General;
  - f) Approve the budget;
  - g) Approve the annual accounts and the management report;
  - h) Appoint the members of the Court and its President, upon proposal by the Appointments Committee;
  - i) Appoint the Secretary General, upon proposal by the Appointments Committee;
  - j) Approve the Internal Staff Regulations, the Code of Ethics and the Confidentiality Manual, upon proposal by the Secretary General.
- 13** In Autonomous Institutions the members of the Board shall be appointed by a general meeting or selected by the Board itself, in both cases upon proposal by the Appointments Committee.
- 14** In Integrated Institutions the Parent Organisation shall appoint the members of the Board, upon proposal by the Appointments Committee.
- 15** More than half of the Board members shall be experts with extensive experience in arbitration as lawyers, advisers, academics or arbitrators.
- 16** The term of members shall not exceed four years. No member shall remain for more than two consecutive terms, except if, upon completing the second term, he or she is elected President of the Board. No person shall sit as President of the Board for more than two consecutive terms.
- 17** The Board shall elect from among its members a President of the Board, who will call and preside over its meetings, and act as representative of the Institution. It is recommended that the President of the Board be someone other than the President of the Court.
- 18** The Board shall meet with the necessary frequency for the proper performance of its administrative and supervisory functions, and with the attendance of all members or a broad majority thereof. Notwithstanding the above, the Board shall meet at least twice per year.

### **2.3. Court or Technical Body**

- 19** The Court shall be of an appropriate size to foster its effective functioning, the participation of its members, and the diversity of its make-up. In any case, it shall have a minimum of five members, including its President.

**20** The functions of the Court shall be to:

- a)** Take the decisions that correspond to the institution in arbitration proceedings, including the appointment, challenge, removal and substitution of arbitrators, the scrutiny of arbitral awards, and the fixing of advances of funds, costs and fees, in accordance with the Rules;
- b)** Supervise, with the assistance of the Secretary General, the arbitration proceedings;
- c)** Approve and amend the Rules, upon proposal by the *ad hoc* committee;
- d)** Define and publish best practices and recommendations for the proper conduct of arbitration proceedings; and
- e)** Create specialised committees of an informational or consultative nature without executive functions, and designate the members upon proposal by the Appointments Committee.

**21** All members of the Court shall be experts with extensive experience in arbitration as lawyers, advisers, academics or arbitrators. They shall be appointed by the Board upon proposal by the Appointments Committee, for a term of not more than four years. No person shall remain a member of the Court for more than two consecutive terms, except if, upon completing the second, he or she is elected President of the Court. No person shall sit as President of the Court for more than two consecutive terms.

**22** The tenure of the Court members shall be fixed. They may only be dismissed by the Board on justified grounds and by reasoned decision, following submissions by the Court itself and upon proposal by the Appointments Committee.

**23** The Court shall be headed by its own President, as appointed by the Board upon proposal by the Appointments Committee. The President of the Court will convene and preside over the Court, which may delegate certain powers to him or her, especially in situations of urgency. The Secretary General will act as the Secretary of the Court.

**24** The functions of the President of the Court shall be to:

- a)** Convene, preside over and manage the Court;
- b)** Establish, should he or she see fit, specialised committees within the Court;
- c)** Ensure adherence to the principles of independence, transparency and confidentiality by the members of the Court.
- d)** Adopt such procedural decisions as, in accordance with the Rules, fall within his or her purview;
- e)** Participate, with right to be heard and to reply, in Board meetings; and

- f) Coordinate and supervise the work of the Secretary General in all matters concerning the activities of the Court.

**25** The Court will hold weekly, fortnightly or monthly sessions, depending on its caseload.

#### **2.4. General Secretariat or Management Body**

**26** The General Secretariat shall include all staff employed by the institution. It shall be headed by the Secretary General, as appointed by the Board upon proposal by the Appointments Committee. The Secretary General shall inform the Board of matters concerning the management of the institution, and the President of the Court in relation to matters concerning the Court's activities.

**27** The functions of the Secretary General shall be to:

- a) Administer the arbitration proceedings in accordance with the Rules;
- b) Adopt such arbitral decisions as, in accordance with the Rules, fall within his or her purview;
- c) Render all assistance necessary to enable the Court to perform its activities;
- d) Act as Secretary of the Court, with the right to speak but not to vote;
- e) Appoint and terminate all employed staff; direct and coordinate their work;
- f) Prepare proposals for the Internal Staff Regulations, the Code of Ethics and the Confidentiality Manual, and submit them to the Board for approval;
- g) Prepare the annual accounts and the management report for their approval by the Board; and
- h) Render assistance and participate with the right to speak, but not to vote, in Board meetings, and
- i) Draft the General Secretariat's remuneration policy for approval by the Board.

#### **2.5. Appointments Committee**

**28** The Appointments Committee shall operate independently from the other Bodies.

**29** Its members, who shall be no more than five, must be experts with a very lengthy career in arbitration as lawyers, advisers, academics or arbitrators, and are appointed by the Board after consulting with the Court, for a single term not exceeding six years. The Appointments Committee shall elect a President and a Secretary from amongst its members.



- 30** The Presidents or members of the Board or the Court, or any executive or employee of the Institution, may not be members of the Appointments Committee.
- 31** In Integrated Institutions it is also prohibited to appoint any affiliated entrepreneur, shareholder, employee or executive of the Parent Company.
- 32** The members of the Appointments Committee shall be fixed. They may only be dismissed by the Board following submissions by the Court and upon proposal by a majority of the remaining members of the Appointments Committee, on justified grounds and by reasoned decision.
- 33** The Appointments Committee shall define the criteria and requisites that each position or role requires. The selection processes shall be transparent and based upon objective criteria. Using the aforesaid criteria, the Committee will evaluate the merits of the candidates and propose one or more suitable candidate for each vacancy.

### **3. INTERNAL FUNCTIONING**

#### **3.1. Code of Ethics**

- 34** The Board will approve a “Code of Ethics”, which shall be binding upon the members of the different bodies and upon the employees of the institution. The Code of Ethics will regulate:
  - a)** Their duties of independence and impartiality;
  - b)** The grounds of incompatibility; and
  - c)** In general, their conduct with respect to the parties, lawyers and experts.
- 35** The Code of Ethics shall include at minimum:
  - a)** The obligation of the members of the different bodies and of the staff employed by the institution to disclose to the Secretary General any relationship or link to an arbitral proceeding administered by the institution; any person so affected must withdraw from the discussions and abstain from any decision that may affect the proceeding, and shall be prohibited from accessing any information or documentation relating to it.

- b)** A prohibition upon the members of the different bodies and the staff of the institution from receiving, directly or indirectly, any type of remuneration, compensation or gift from the parties, lawyers, experts, arbitrators or any other person related to the arbitral proceeding.
- c)** A prohibition upon staff employed by the institution from (i) providing legal advice, directly or indirectly, on matters that are or may be the subject of an arbitration administered by said institution, or (ii) making recommendations on the selection of lawyers.
- d)** A prohibition upon members of the different bodies and upon the staff of the institution from acting as arbitrators in arbitrations administered by the institution; exceptionally, the members of the bodies may accept an appointment as sole arbitrator or presiding arbitrator, provided that the parties so agree once the dispute has arisen; if appointed as sole arbitrator or president, the member of the body must withdraw and abstain from taking part in any decision that may affect the proceeding, and is prohibited from accessing any information or documentation relating to it.
- e)** A prohibition upon members of the Board or the Appointments Committee from accessing all documentation or information relating to arbitral proceedings that the Court administers.
- f)** A prohibition upon the members of the Court from accessing documentation or information relating to arbitral proceedings being administered, that is not strictly necessary for the taking of decisions by the Court.

### **3.2. Administrative Formalities**

**36** Arbitral institutions shall:

- a)** Possess the necessary resources for the proper performance of their functions;
- b)** Adopt and publish protocols explaining the operation of their internal bodies;
- c)** Possess a regulatory compliance policy;
- d)** Keep minutes documenting their meetings and formalising the decisions of the institution's bodies.

**37** Arbitral institutions shall periodically review, evaluate and certify the quality of their internal procedures.

**38** Arbitral institutions shall hold a civil liability insurance policy with sufficient coverage for any damages that they may cause to third parties.

### **3.3. Information Storage and Data Protection**

- 39** The Board will approve a “Confidentiality Manual” that assures the confidentiality of the documents and information submitted in the proceeding. The members of the internal bodies and the institution’s staff must sign a confidentiality undertaking.
- 40** Institutions may allow researchers to access their archives for research projects relating to arbitration. Such access shall be subject to the signing of a confidentiality agreement. The arbitral institution shall adopt all necessary data protection measures to handle personal information as required by the applicable rules.
- 41** The arbitral institution shall implement mechanisms to protect the personal information being handled under its responsibility. To do so it will implement technical and organisational measures to ensure the adequate security and confidentiality of personal information, including preventing the unauthorised accessing or use of such information and of the equipment used in handling it.

### **3.4. Approval of the Annual Accounts**

- 42** The General Secretariat will prepare, and the Board will approve, the institution’s annual accounts and management report, which must faithfully reflect its assets, financial position and results.
- 43** The annual accounts will describe the financing of the institution, itemising sponsorships received for the holding of conferences and other events.
- 44** Integrated Institutions will publish their own annual accounts separately from those of their Parent Organisation.

## **4. ARBITRATION PROCEEDINGS**

### **4.1. Duties of the Court and the Secretary General**

- 45** The Court and the Secretary General shall ensure the proper conduct of arbitration proceedings, due process, and respect for the principles of equality, fair hearing and reply.
- 46** The Court and the Secretary General shall ensure that the arbitrators correctly perform their functions and act in accordance with the Rules and the present CBP.

- 47** Whilst respecting the independent decision-making of the arbitrators, the Court and the Secretary General shall ensure the quality of arbitral awards.

#### **4.2. Appointment, Confirmation, Challenge and Replacement of Arbitrators**

- 48** Decisions on the appointment, confirmation, challenge, and replacement of arbitrators will be taken by the Court (or by a committee delegated by the Court).
- 49** The Court will provide the reasoning for its decisions on challenges or replacements of arbitrators.
- 50** The Court will respect the preferences of the parties concerning the composition of arbitral tribunals and the selection of arbitrators, provided that the latter meet the requirements of availability, independence and impartiality.
- 51** The Court will establish objective criteria to guarantee that:
- a)** The arbitrators possess the appropriate integrity, experience and technical and professional qualifications;
  - b)** The selection process is inclusive and encourages diversity, particularly with regard to age, gender and origin; and
  - c)** The arbitrators have sufficient availability to adequately perform their functions, and are independent and impartial.
- 52** When the parties have not agreed upon a specific method for appointing the president of the arbitral tribunal or the sole arbitrator:
- a)** As a general rule, the Court will prepare a list of names proposed by the parties and by the arbitral institution itself, in accordance with the CEA Model Rules. Each party will have the right to veto one third one third of the proposed names, and shall rank the remaining names in order of preference. The arbitrator with the lowest joint point score will be appointed.
  - b)** As a general rule, in expedited proceedings or in proceedings with an amount in dispute below a figure set at the institution's discretion, a system of direct appointment shall be used.
  - c)** When one of the parties has not nominated its corresponding arbitrator, the Court will do so directly.
- 53** Every arbitrator, prior to his or her appointment or confirmation, must submit a declaration of impartiality, independence and availability in line with the model attached as Annex C.

### **4.3. List of Arbitrators**

- 54** It is recommended that institutions do not keep a list of arbitrators.
- 55** Should they do so, the following criteria must be met:
- a)** The list shall be public, open and non-binding, and reviewed each year.
  - b)** The inclusion criteria shall be public and objective.
  - c)** No person who satisfies the established criteria may be rejected for matters other than his or her experience, technical or professional qualifications, or probity.
  - d)** Decisions of acceptance or rejection shall be taken by the Court, and rejection decisions must be reasoned.

### **4.4. Financial Management of the Proceedings**

- 56** The fee schedules of institutions shall be public. They must separately itemise administration costs and arbitrator fees, differentiating where applicable between the president of the tribunal and the co-arbitrators.
- 57** Arbitral institutions shall take no share whatsoever in the fees of the arbitrators.
- 58** Arbitral institutions will ensure that the fees of the arbitrators are reasonable and are commensurate with the amount in dispute or the complexity of the matters. Arbitral institutions may reduce the fees payable to arbitrators when they have performed their functions without due diligence or have not fulfilled their obligations. Arbitrators cannot receive any amount directly from the parties or their lawyers
- 59** Arbitral institutions shall ensure the appropriate financial management of the advances of funds received from the parties by depositing the corresponding amounts in a blocked bank account, except in order to pay the fees of the arbitrators and the institution's own expenses as the arbitration proceeding progresses through its stages.

## **5. TRANSPARENCY**

### **5.1. Web Page**

- 60** Every arbitral institution shall publish on its web page information on its structure and operation, including:
- a)** Contact details and links;

- b) History and general description;
- c) The characteristics, nature and scope of the services it offers, and the languages in which it provides them;
- d) Its Bylaws and all regulations or recommendations concerning its governance regime; its Code of Ethics, Confidentiality Manual, and Internal Regulations;
- e) The bodies that comprise it, the names of the persons in those bodies and their respective CVs, the assignment of roles and responsibilities within each body and the election procedures for its members, as well as the length of their terms;
- f) The names of any persons who sponsor conferences and events organised by the Arbitral Institution, and the amounts paid by such sponsors in the last five years;
- g) The arbitration Rules;
- h) The schedules and fees of the arbitrators, together with a calculator to facilitate calculation thereof;
- i) The annual accounts and the management reports for the last five fiscal years; and
- j) Detailed statistics on the matters it administers and on arbitrator appointments, broken down by age, gender and origin.

## 5.2. Listing of Arbitration Proceedings

- 61** Each arbitral institution shall publish on its webpage a list of the cases administered by it, indicating:
- a) An anonymised reference to the nature of the parties;
  - b) The names of the arbitrators, their positions on the arbitral tribunal, and the manner in which they were appointed;
  - c) Any challenges, if they occurred, and their outcome;
  - d) The administrative secretaries, if applicable;
  - e) The lawyers representing the parties;
  - f) The type of contract, applicable law, and language and place of arbitration;
  - g) The dates when the arbitration commenced, the terms of reference or first procedural order were issued, and the award rendered; and,
  - h) When an award has been rendered, whether its content is public or otherwise the reasons for its confidentiality.

## 5.3. Publication of Awards

- 62** Every arbitral institution shall publish the awards rendered within a brief period following their approval, anonymising the names of the parties but keeping the names of the arbitrators and lawyers.

- 63** If a party expressly objects pursuant to the procedures set forth in the Rules, or the institution considers that are relevant grounds justifying confidentiality, then the award will not be published but the arbitral institution may publish an anonymised summary or a redacted extract of such awards, whilst keeping the names of the arbitrators and the lawyers.
- 64** Arbitral institutions shall publish redacted versions of their reasoned decisions on arbitrator challenges and replacements, with the names of the parties and arbitrators anonymised.

## II. SECTION TWO: ARBITRAL PROCEDURE

### 1. MODEL RULES

- 65 The CEA recommends that all institutions adopt a set of rules that conform to the “Model Rules” attached hereto as Annex A.
- 66 If an institution adopts the Model Rules but decides to introduce modifications, it must identify these clearly, in order to prevent unintentional errors by users.

### 2. ARBITRATION AGREEMENT

- 67 The CEA recommends that users employ the model arbitration agreement which is attached as Annex B, and adapt it to their specific needs.
- 68 In addition, users should take into account the following recommendations:
  - a) The seat or place of arbitration should be located in a country that has ratified the New York Convention of 1958.
  - b) The arbitration shall preferably be in law and not in equity.
  - c) Drafters should avoid hybrid clauses that submit certain kinds of disputes to arbitration and others to the courts of law.
  - d) Generally it is recommended that matters be determined by a sole arbitrator, except where the amount in dispute or significance of the contract and of the potential issues call for the appointment of an arbitral tribunal of three arbitrators; the use of arbitral tribunals of more than three arbitrators is not advisable.
  - e) A single language should be agreed upon; translations should be dispensed with for documents written in other languages with which the parties and the arbitrators are conversant.
  - f) If confidentiality is an issue of great significance for the parties, then there should be an express agreement as to the confidential nature of the proceeding and the scope of the duty of confidentiality.



# III. SECTION THREE: DUTIES OF ARBITRATORS

## 1. IMPARTIALITY AND INDEPENDENCE

- 69** Arbitrators must be impartial and independent.
- 70** The qualities of impartiality and independence require that arbitrators have the willingness and the capability to perform their role without bias toward any of parties, and that they keep an objective distance from the parties, the dispute, and other persons involved in the arbitration.
- 71** The duty of impartiality and independence commences with the proposal for appointment and continues until the conclusion of the arbitration proceeding.
- 72** The duty of impartiality and independence applies to all arbitrators, including any who are nominated unilaterally by one party, except as otherwise agreed by the parties.
- 73** Arbitrators who are unilaterally nominated by one party do not have the special role or duty of ensuring that their nominating party's case is adequately understood by the other members of the arbitral tribunal, or any other special role or duty with regard to their nominating party's case, except as otherwise agreed by the parties.

## 2. DUTY OF ABSTENTION

- 74** All arbitrator candidates must, without undue delay, refuse their appointment if:
  - a)** They harbour doubts about their willingness or capability to perform their role without bias toward any of the parties; or
  - b)** There are circumstances which, in the view of a reasonable and informed person, give rise to justifiable doubts about their impartiality or independence; or
  - c)** They do not possess the qualifications required by the parties; or
  - d)** They lack the necessary available time to adequately perform their role.
- 75** The duty of abstention is ongoing from the arbitrator's proposal for appointment until the conclusion of the arbitration proceeding. Arbitrators

who become subject to supervening grounds for abstention must immediately resign from their position as arbitrator by giving corresponding notice to the parties.

- 76** Exceptionally, even if there are existing or circumstances arise that may give rise to justifiable doubts regarding a candidate's impartiality or independence, he or she may accept the appointment as arbitrator and continue acting as such if all of the parties, after being informed of those circumstances, expressly agree.
- 77** The examples below illustrate some of the circumstances for abstention:
- a)** Employee, executive or director: The candidate or arbitrator is an employee, executive or director of one of the parties.
  - b)** Same law firm: The candidate or arbitrator works in the law firm that is representing one of the parties.
  - c)** Close relative: The candidate or arbitrator is a close relative of one of the parties, or of an employee, executive or director of one of the parties, or of one of the lawyers for the parties.
  - d)** Significant interest: The candidate or arbitrator has a significant interest in the outcome of the arbitration.
  - e)** Advice relating to the dispute: The candidate or arbitrator is advising or has advised one of the parties in relation to the dispute under arbitration.
  - f)** Close friendship or manifest enmity: The candidate or arbitrator has a close friendship or manifest enmity with one of the parties or with one of their lawyers in the arbitration.

### **3. DUTY OF DISCLOSURE**

- 78** Arbitrator candidates who decide to accept their appointment shall disclose to the parties any circumstance that may give rise to justifiable doubts regarding their impartiality and independence.
- 79** The duty of disclosure is ongoing from the proposal for appointment until the conclusion of the arbitration proceeding. Arbitrators must disclose supervening circumstances without unjustified delay.
- 80** The existence of disclosable circumstances does not of itself entail either a duty of the candidate to refuse the appointment, or the existence of grounds for challenge. The candidate or arbitrator must treat disclosure as a duty of information so that the parties, and if applicable, third parties entrusted with appointing arbitrators and determining possible challenges, may evaluate whether grounds for challenge exist.

- 81** If the candidate or arbitrator is unsure whether a circumstance can reasonably give rise to justifiable doubts about their impartiality or independence in a particular case, then he or she must opt for disclosure.
- 82** Failure to comply with the duty of disclosure does not alone imply the existence of grounds for challenge, but it is a factor which must be considered and can influence the decision to disqualify an arbitrator.
- 83** Arbitrator candidates must not request the parties to generally waive their right to require that the candidates comply with their duty of disclosure in respect of future circumstances.
- 84** In order to assist candidates and arbitrators in fulfilling their duty of disclosure, the following non-exhaustive list illustrates questions that are advisable to consider when evaluating whether there are circumstances that should be disclosed. The time periods indicated in some of these questions are considered reasonable, although this does not prevent the parties from agreeing to others. Any questions that candidates or arbitrators answer affirmatively will normally be indicative of the need to disclose, although there may be cases where, owing to triviality of the circumstance or some other reason, an affirmative answer does not reasonably imply the need for disclosure.

### Links with the parties

- 1)** Are you currently acting for or advising one of the parties or against one of the parties in a matter?
- 2)** In the last 10 years, have you acted for or advised one of the parties or against one of the parties?
- 3)** In the last 10 years, have you issued an opinion at the request of one of the parties?
- 4)** Is your firm currently acting for or advising one of the parties or against one of the parties in a matter, without your involvement?
- 5)** In the last three years, has your firm acted for or advised one of the parties or against one of the parties in a matter, without your involvement?
- 6)** Are you, or is someone from your firm, currently sitting as an arbitrator in another arbitration to which one of the parties is a party?
- 7)** In the last 10 years, have you served as an arbitrator in another arbitration in which one of the parties was a party?
- 8)** In the last 10 years, have you been appointed as an arbitrator in another arbitration by one of the parties?
- 9)** Is there any other personal or professional relationship, present or past, with either of the parties that you consider you should disclose?

### Links with the dispute

- 10) Have you, or has your firm, provided advice or issued an opinion on the dispute or on some aspect thereof at any previous time?
- 11) Can the outcome of the dispute afford, you some benefit or cause you detriment, financial or otherwise?
- 12) If you answer yes to any of questions (1) through (9) and (13) through (31), is the other matter or arbitration related to the current arbitration?

### Links with the lawyers for the parties

- 13) Are you, or is your firm, currently acting for or advising one of the lawyers for the parties in a matter?
- 14) Are you currently acting as a lawyer in another arbitration in which one of the lawyers for the parties is a lawyer or arbitrator?
- 15) Is your firm currently acting, without your involvement, in another arbitration in which one of the lawyers for the parties is a lawyer or arbitrator?
- 16) In the last three years, have you served as a lawyer in another arbitration in which one of the lawyers for the parties was a lawyer or arbitrator?
- 17) Are you currently serving as an arbitrator in another arbitration in which one of the lawyers for the parties is a lawyer or arbitrator?
- 18) In the last three years, have you served as an arbitrator in another arbitration in which one of the lawyers for the parties was a lawyer or arbitrator?
- 19) In the last 10 years, have you been appointed as an arbitrator in another arbitration by one of the lawyers for the parties?
- 20) Is there any other personal or professional relationship, present or past, with one of the lawyers for the parties that you consider you should disclose?

### Links with the other arbitrators

- 21) Are you, or is your firm, currently acting for or advising one of the arbitrators in a matter?
- 22) Are you currently acting as a lawyer in another arbitration in which one of the other arbitrators is an arbitrator or lawyer?
- 23) Is your firm currently acting, without your involvement, in another arbitration in which one of the other arbitrators is an arbitrator or lawyer?
- 24) In the last three years, have you served as a lawyer in another arbitration in which one of the other arbitrators was an arbitrator or lawyer?

- 25) Are you currently acting as an arbitrator in another arbitration in which one of the other arbitrators is an arbitrator or lawyer?
- 26) In the last three years, have you served as an arbitrator in another arbitration in which one of the other arbitrators was an arbitrator or lawyer?
- 27) Is there any other personal or professional relationship, present or past, with one of the other arbitrators that you consider you should disclose?

#### Links with other persons involved in the arbitration

- 28) Are there any personal or professional relationships, present or past, with third-party funders that you consider you should disclose?
- 29) Are there any personal or professional relationships, present or past, with witnesses that you consider you should disclose?
- 30) Are there any personal or professional relationships, present or past, with expert witnesses that you consider you should disclose?
- 31) Are there any personal or professional relationships, present or past, with the arbitral institution that you consider you should disclose?

## 4. DUTY OF INQUIRY

- 85 In order for arbitrator candidates to fulfil their duties of abstention and disclosure, they must carry out an inquiry into their past and present relationships with the persons involved in the arbitration and with the dispute under arbitration.
- 86 To this end, arbitrator candidates are deemed to have in principle, the same identity as the law firm to which they belong. However, the period of time over which the firm's past relationships are investigated can reasonably be reduced when the candidate has not personally participated in those relationships.

## 5. PROHIBITION OF *EX PARTE* COMMUNICATIONS

- 87 All arbitrators or candidates shall abstain from any unilateral or *ex parte* communication regarding the case with any of the parties or their lawyers, except as otherwise agreed by the parties. This duty continues from the time a person is considered as an arbitrator candidate until the conclusion of the arbitral proceedings.
- 88 The communications that an arbitrator candidate may have with the party proposing his or her nomination, or with that party's lawyer, are exempt from the foregoing prohibition provided that their content is limited to:

- a) Informing the candidate of the identity of the parties and their lawyers;
  - b) Enquiring about the candidate's availability;
  - c) Enquiring about the candidate's qualifications; and
  - d) Providing the candidate with a brief general description of the case.
- 89** The *ex parte* communications that a co-arbitrator may have with his or her nominating party or with that party's lawyer are also exempt from the foregoing prohibition when the co-arbitrators must jointly attempt to appoint a president, provided that the content of such communications is limited to identifying and discussing possible candidates.
- 90** The candidate or arbitrator has no obligation to conduct any of the *ex parte* communications described in the preceding two exceptions, and if he or she agrees to having them, he or she must inform the other parties and arbitrators of their existence.
- 91** In either of the two preceding grounds, none of the participants may express or seek an opinion about any aspect of fact or law, whether procedural or substantive, in the case.

## **6. FEES AND EXPENSES**

- 92** Arbitrators in *ad hoc* arbitrations must, upon their appointment or without unjustified delay thereafter, ensure that the parties know the amount of their fees or the method for calculating them.
- 93** Arbitrators in institutional arbitrations cannot collect fees or any other remuneration directly from the parties.
- 94** Arbitrators shall ensure that proceedings are conducted efficiently, without the parties' incurring excessive or unnecessary expenses.

## **7. SECRETARY**

- 95** Subject to prior consent of the parties, the president or sole arbitrator may designate a secretary who, following the former's instructions and under his or her supervision, may perform certain tasks of an administrative, organisational or supporting nature.
- 96** The secretary shall be appointed and removed by the president or sole arbitrator, and shall have the same duties of confidentiality, independence and impartiality as the arbitrators. The president or sole arbitrator will propose a candidate and provide the parties with a CV setting out the candidate's

nationality, educational qualifications and professional experience, and also attach a document in which the proposed secretary confirms his or her independence, impartiality and availability.

- 97** The arbitrators shall not delegate to the secretary any decision-making or evaluative role concerning the positions of the parties in fact or in law.
- 98** The secretary shall be remunerated directly by the president or sole arbitrator from the latter's own fees, except where the parties and the co-arbitrators, prior to their appointments, agree to an other system.

## **8. ARBITRATION AND MEDIATION**

- 99** Arbitrators shall not express their preliminary opinion on the likelihood of success or failure of any of the claims by the parties in the arbitration, unless all of the parties so authorise.
- 100** Arbitrators shall not act as mediators in the same dispute, unless all of the parties so authorise.
- 101** Arbitrators may, without need of authorisation from the parties, offer them information concerning possible ways of combining arbitration and mediation.

## **9. CONFIDENTIALITY**

- 102** The deliberations of the arbitral tribunal shall be secret. The duty of secrecy shall continue after the conclusion of the proceedings.
- 103** Unless the parties agree otherwise, arbitrators must maintain the confidentiality of all information they may learn in the course of the arbitration. Such information includes, for example:
- a)** The submissions of the parties;
  - b)** The evidence tendered;
  - c)** Any settlement agreement that the parties may reach in relation to the dispute under arbitration; and
  - d)** The decisions and the award.
- 104** The duty of confidentiality does not prevent arbitrators from publishing an anonymised list of the proceedings in which they have participated, indicating for example:

- a)** A generic mention of the nature of the parties (e.g., company, entity or natural person);
- b)** The nationality or geographical origin of the parties;
- c)** The type of arbitration, institutional or ad hoc;
- d)** The names of the other arbitrators and of the lawyers;
- e)** The sector or industry involved in the dispute;
- f)** The law governing the merits of the dispute;
- g)** The seat or place and the language of the arbitration; and
- h)** Whether the arbitration is pending or closed.



## IV. SECTION FOUR: DUTIES OF LAWYERS

### 1. GENERAL PRINCIPLES

- 105** Lawyers must at all times act with integrity and honesty, in defence of their clients' interests.
- 106** Lawyers shall do everything possible for the arbitration proceedings to be conducted expeditiously and efficaciously in terms of cost and time.
- 107** The duties described in this section must be performed without prejudice to the lawyer's fundamental obligation to faithfully defend his or her client and to present its case in the most effective manner. These duties are additional to those which lawyers may have in accordance with any other ethical standards that may apply to them.

### 2. APPOINTMENT OF LAWYERS

- 108** The parties shall be free to appoint and dismiss their lawyers.
- 109** The parties shall identify all of the lawyers who are advising them. This disclosure must be made as soon as possible after their engagement, by providing their names and addresses and attaching their authorisations.
- 110** In the event of the dismissal or resignation of all of a party's lawyers, without the appointment of their successors within a time that is reasonable or otherwise established by the arbitrators, it shall be understood that the party is representing itself.
- 111** Once the arbitrators have been appointed, if changes occur within the initially appointed legal teams, then the arbitrators may, after hearing the parties, reject those changes in a reasoned decision, with a view to safeguarding the integrity of the proceeding.
- 112** The integrity of the proceeding shall be deemed adversely affected in the following circumstances:
- a)** If the party instituting the change is acting with dilatory intent or in abuse of process; or
  - b)** If there is a conflict of interest between the new lawyer and any of the arbitrators.

### **3. PROHIBITION OF COMMUNICATION WITH THE ARBITRATORS**

- 113** Lawyers must not engage in secret written or verbal communication with an arbitrator in order to exchange information that is (directly or indirectly) related to the arbitration proceedings.
- 114** The situations described in Recommendations 88 and 89 are exempt from the preceding prohibition.

### **4. DUTIES OF INTEGRITY**

#### **4.1. Veracity of Pleaded Facts**

- 115** Lawyers shall refrain from knowingly making false affirmations, both in their written submissions and in their oral pleadings.
- 116** This duty shall be especially strict in summary or expedited proceedings, such as those for injunctive relief, or where the counterparty fails to appear.
- 117** In the event that a party's lawyer discovers that he or she has made false statements of fact, he or she must inform the party of this situation and of his or her obligation to rectify it.

#### **4.2. Reasonableness of Legal Grounds**

- 118** Lawyers shall refrain from knowingly citing non-existent legal grounds and or from distorting the true meaning of case law by using incomplete or tendentious citations.
- 119** This duty shall be especially strict in summary or expedited proceedings, such as those for injunctive relief.

#### **4.3. Veracity of the evidence**

- 120** Lawyers shall refrain from collaborating or participating, directly or indirectly, in the creation or submission of false evidence.
- 121** In the event that a party's lawyer discovers that he or she has submitted false evidence, he or she must inform the party of this situation and of his or her obligation to rectify it.

#### 4.4. Production of Documents

- 122** When there is a reasonable presumption of the potential emergence of a dispute, lawyers must inform the client of its duty not to destroy any documents in its possession or under its control and which may prove relevant to the dispute.
- 123** Lawyers must inform the client of its obligation to produce the documents in question or those ordered by the arbitrators, and of the consequences for failing to do so.
- 124** Lawyers shall refrain from concealing or destroying documents that may prove relevant for the resolution of the dispute or which must be produced in the document production stage, or from participating in their concealment or destruction.
- 125** In relation to applications for document production, lawyers must refrain from:
- a)** Making applications with tortious intent or knowingly pleading false facts;
  - b)** Making objections to a counterparty's applications by knowingly pleading false facts; and
  - c)** Justifying the failure to submit certain documents by knowingly pleading false facts.
- 126** If in the course of an arbitration a lawyer discovers the existence of a document in his or her client's possession that should have been submitted but was not, he or she must immediately inform his or her client of the duty to submit it.

#### 4.5. Witness and Expert Evidence

- 127** Lawyers shall refrain from:
- a)** Submitting in the arbitration proceedings any witness testimony or expert report that they know to contain false information; and
  - b)** Calling a witness or expert for their case knowing of the falsehood of the corresponding testimony or report.
- 128** Lawyers may collaborate with witnesses and experts in the preparation of their testimonies and reports.
- 129** Witnesses may be paid reasonable compensation for their time employed and the costs and expenses incurred.

## 5. CONFIDENTIALITY

**130** Lawyers must keep confidential any information that they acquire in the arbitration proceedings. Such information includes:

- a) The submissions of the parties;
- b) The evidence presented;
- c) Any settlement agreement that the parties may reach in relation to the dispute under arbitration; and
- d) The decisions and the award.

**131** The duty of confidentiality does not prevent lawyers from publishing an anonymised list of the proceedings in which they have participated, indicating for example:

- a) A generic mention of the nature of the parties (e.g., company, entity or natural person);
- b) The nationality or geographical origin of the parties;
- c) The type of arbitration, institutional or ad hoc;
- d) The names of the arbitrators and of the other lawyers;
- e) The sector or industry involved in the dispute;
- f) The law governing the merits of the dispute;
- g) The seat or place and the language of the arbitration; and
- h) Whether the arbitration is pending or closed.

## 6. BREACH

**132** If a lawyer breaches any of the duties described in this Section, then the arbitrators, after hearing both parties and the lawyer concerned, may adopt any of the following measures:

- a) Caution the lawyer verbally or in writing;
- b) Draw adverse inferences when evaluating the evidence;
- c) Take the lawyer's conduct into consideration when awarding costs;
- d) Notify the matter to any Bar Associations with which the lawyer is registered, for the determination of ethical responsibilities; and
- e) Adopt any other measure in order to preserve the integrity of the proceedings.

## V. SECTION FIVE: DUTIES OF EXPERTS

### 1. OBJECTIVITY AND INDEPENDENCE

- 133** Experts must be objective and independent.
- 134** The qualities of objectivity and independence require that experts possess the willingness and capability to perform their role, are guided by the truth and report, not only aspects that are favourable to the party that has appointed them, but also those adverse to it, and maintain an objective distance from the appointing party, the dispute, and other persons involved in the arbitration.
- 135** The duty of objectivity and independence requires that experts have no financial interest in the outcome of the arbitration.
- 136** The duty of disclosure is ongoing from the time the expert's appointment is proposed until the conclusion of the arbitration proceedings.

### 2. ACCEPTANCE OF APPOINTMENTS

- 137** It is recommended that experts formalise their acceptance, their declaration of objectivity and independence, and their disclosure of any circumstances that might give rise to doubt, in a document conforming to the model attached hereto as Annex D.
- 138** All expert reports must clearly identify the person or persons who acknowledge that the content is their own opinion and take responsibility for the conclusions.

### 3. DUTY OF DISCLOSURE

- 139** Both in their acceptances and in their reports, all experts must expressly declare that they comply with the requirements of objectivity and independence.
- 140** At the same time, experts must disclose any circumstance which, in the view of a reasonable and informed person, may give rise to justifiable doubts as to their objectivity and independence.

- 141** The duty of disclosure is ongoing from the time the expert's appointment is proposed until the conclusion of the arbitration proceedings.
- 142** Disclosure does not in and of itself imply the existence of a conflict of interest that would prevent an expert from participating in the arbitration. Experts must treat disclosure as a duty of information so that the parties and the arbitrators may evaluate the expert evidence with the full facts before them.
- 143** If an expert is unsure whether a circumstance can reasonably give rise to justifiable doubts about his or her objectivity and independence, then he or she must opt for disclosure.
- 144** In order to fulfil their duty of disclosure, experts must carry out an inquiry into their past and present relationships with the persons involved in the arbitration and with the dispute. To this end, experts are deemed to have in principle the same identity as the firm to which they belong. However, the period of time over which the firm's past relationships are investigated can be reasonably reduced when the candidate has not personally participated in those relationships.
- 145** The list of examples provided below is intended to assist experts in fulfilling their duty of disclosure. It is a non-exhaustive list of questions that it is advisable to consider when evaluating whether there are circumstances that should be disclosed. Any questions that experts answer affirmatively will normally be indicative of the need to disclose, although there may be cases where, owing to triviality of the circumstance or some other reason, an affirmative answer does not reasonably imply the need for disclosure.

### Links with the parties

- 1)** Are you currently acting as an expert for or against one of the parties in some matter?
- 2)** In the last 10 years, have you acted as an expert for one of the parties or against one of the parties in some matter?
- 3)** Is your firm currently acting as an expert for one of the parties or against one of the parties in some matter, without your involvement?
- 4)** In the last three years, has your firm acted as an expert for one of the parties or against one of the parties in some matter, without your involvement?
- 5)** Is there any other personal or professional relationship, present or past, with either of the parties that you consider you should disclose?

### Links with the dispute

- 6) Have you, or has your firm, provided advice or issued an opinion on the dispute or on some aspect thereof at any previous time?
- 7) Can the outcome of the dispute afford you some benefit or occasion you some detriment, financial or otherwise?
- 8) If you answer yes to any of questions (1) through (5) and (9) through (15), is the other matter or arbitration related to the current arbitration?

### Links with the lawyers who have appointed you

- 9) Are you or your firm currently acting as an expert in another proceeding upon appointment by the same lawyer or law firm that has appointed you in the present arbitration?
- 10) In the last three years, has your firm acted, without your involvement, as an expert in another proceeding upon appointment by the same lawyer or law firm that has appointed you in the present arbitration?
- 11) In the last 10 years, have you personally acted as an expert in another proceeding upon appointment by the same lawyer or law firm that has appointed you in the present arbitration?
- 12) Is there any other personal or professional relationship, present or past, with one of the lawyers for the parties that you consider you should disclose?

### Links with other persons involved in the arbitration

- 13) Is there any personal or professional relationship, present or past, with third-party funders that you consider you should disclose?
- 14) Is there any other personal or professional relationship, present or past, with witnesses that you consider you should disclose?
- 15) Is there any personal or professional relationship, present or past, with the arbitral institution that you consider you should disclose?

## 4. CONTENT OF REPORTS

**146** Experts shall submit a signed written report on the matters in their brief. The report must include at least the following aspects:

- a) The expert's professional credentials and experience in the disputed matter, identifying where applicable any aspects outside his or her competence;
- b) A description of the brief received;
- c) An explanation of the work method adopted;
- d) Itemised identification of the documents and other information

- under analysis;
- e) The conclusions reached;
- f) If the conclusions contradict opinions previously expressed by the expert in other instances, then detailed justification for the change of view shall be given;
- g) If there are counter-reports, then the points of agreement and disagreement shall be specified.

## **5. RESPECT AND LOYALTY**

- 147** The expert shall act with respect and loyalty toward the arbitrators and the other parties.
- 148** Upon request by any of the parties, and provided the arbitrators consider it appropriate, the expert shall attend the hearing to defend his or her report, and to clarify any questions raised by the parties and the arbitrators.
- 149** Upon request by the arbitrators, the expert may amplify his or her report or participate in cooperative arrangements amongst experts.

## **6. FEES**

- 150** Experts will collect their fees directly from the party that appointed them. In the case of arbitrator-appointed experts, the arbitrators shall fix the amount and the manner of payment of the fees.
- 151** The fees shall be agreed upon beforehand, taking into account the expert's knowledge, effort and other objective factors. In no case shall the fees have a variable component that depends upon the outcome of the arbitration.

## **7. CONFIDENTIALITY**

- 152** Experts must keep confidential any information that they learn in the arbitration proceedings. Such information includes:
- a) The submissions of the parties;
  - b) The evidence presented;
  - c) Any settlement agreement that the parties may reach in relation to the dispute under arbitration; and
  - d) The decisions and the award.
- 153** The duty of confidentiality does not prevent experts from publishing



an anonymised list of the proceedings in which they have participated, indicating for example:

- a)** A generic mention of the nature of the parties (e.g., company, entity or natural person);
- b)** The nationality or geographical origin of the parties;
- c)** The type of arbitration, institutional or ad hoc;
- d)** The names of the arbitrators and of the lawyers;
- e)** The sector or industry involved in the dispute;
- f)** The law governing the merits of the dispute;
- g)** The seat or place and the language of the arbitration; and
- h)** Whether the arbitration is pending an award, or closed.

## **VI. SECTION SIX: DUTIES IN RELATION TO FUNDING**

### **1. OBLIGATION OF DISCLOSURE**

- 154** Any party that has received funds or obtained any type of third-party funding linked to the outcome of the arbitration shall inform the arbitrators and the counterparty no later than in its statement of claim, and provide the identity of the funder.
- 155** If the obtaining of funds or funding occurs after the filing of the statement of claim, then the party concerned shall provide the counterparty and the arbitrators with the same information within a reasonable period.
- 156** The arbitrators may request said party to provide any additional information that may be relevant. In complying with this obligation, the requested party may suppress the confidential details and, in particular the financial conditions of the transaction.

# **ANNEX A.**

## **CEA MODEL ARBITRATION RULES**

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# I. GENERAL CONSIDERATIONS

## 1. SCOPE OF APPLICATION

**157** These Rules shall apply to arbitrations administered by the Court of *[name of the applicable arbitral institution]*.

## 2. RULES OF INTERPRETATION

**158** In these Rules:

- a) Reference to the Court shall be understood as being to *[name of the applicable arbitral institution]*;
- b) Reference to the “arbitrators” shall be understood as being to the arbitral tribunal, composed of one or more arbitrators;
- c) References in the singular comprise the plural when there are multiple parties;
- d) Reference to the “arbitration” shall be understood as equivalent to “arbitration proceedings”;
- e) Reference to “correspondence” comprises all notifications, requests, documents, letters, notes or information addressed to any of the parties, to the arbitrators, or to the Court;
- f) Reference to “contact details” shall comprise the subject’s registered address, habitual residence, place of business, postal address, telephone, fax and email address.

**159** It shall be understood that the parties entrust the administration of the arbitration to the Court when the arbitration clause submits the resolution of their differences to “the Court”, to the “Rules of the Court”, to the “arbitration rules of the Court”, or if they employ other analogous wording.

**160** Submission to the Arbitration Rules shall be understood as being made to the Rules in force at the commencement date of the arbitration, unless the parties have expressly agreed to submit to the Rules in force at the date of the arbitration agreement.

**161** Reference to the “Arbitration Act” shall be understood as being made to the arbitration legislation that is applicable and in force at the time the request for arbitration is filed.

**162** If the arbitral tribunal has not yet been constituted, then it falls to the Court, acting *ex officio* or upon request by any of the parties or by the arbitrators, to finally resolve any doubt that may arise regarding the interpretation of these Rules.

### 3. CORRESPONDENCE

- 1 All correspondence by the parties, as well as any accompanying documents, shall be in digital form and sent electronically, except where this is not possible or where the Court or the arbitrators order that it be presented on paper.
- 2 Each party in its first submission shall designate an email address for correspondence purposes. All correspondence that is to be directed to that party during the arbitration is to be sent to that address. The parties shall also designate a physical address if necessary.
- 3 If a party has not designated an address for correspondence, and no such address has been stipulated in the contract or arbitration agreement, then correspondence to that party is to be addressed to its registered address, place of business or habitual residence.
- 4 In the event that after reasonable inquiries it is not possible to determine any of the places mentioned in the preceding item, then correspondence to the party concerned is to be directed to the last registered address, habitual residence, place of business or known address of the recipient.
- 5 The party initiating the arbitration is responsible for providing the Court with the respondent's details as enumerated in items 2 and 3, until such time as the respondent appears in the arbitration or designates an address for correspondence.
- 6 Correspondence shall be by email but may also be made via registered mail, certified mail, courier, fax or any other means that provides certification of both sending and receipt.
- 7 Correspondence will be deemed received on the day of its:
  - a) Receipt at the email address;
  - b) Receipt in person by the addressee;
  - c) Receipt at the registered address, habitual residence, place of business or known address; or
  - d) Attempted delivery in accordance with the terms of item 4 of this article.
- 8 The parties may agree for correspondence to be effected solely by electronic means via a communication platform specified or arranged for that purpose by the Court.



## **4. TIME LIMITS**

- 1** Unless otherwise specified, where time limits are specified in days from a particular date, that date shall be excluded from the calculation, which shall commence from the following day.
- 2** All correspondence will be deemed received on the day on which delivery has been effected or attempted in accordance with the terms of the preceding article.
- 3** The calculation of time limits does not exclude non-business days, but if the final day of a time limit is a non-business day at the place where the Court is based, then it shall be understood as being extended until the next business day.
- 4** The time limits established in these Rules are, in accordance with the circumstances of the case, subject to modification (including extension, reduction or suspension) by the Court until the arbitral tribunal is constituted, and by the arbitrators thereafter, except where expressly agreed otherwise by the parties.
- 5** The Court will ensure at all times that the time limits are effectively complied with, and will endeavour to avoid delays. This point will be taken into account by the arbitrators when deciding on the costs of the arbitration, and by the Court when fixing the final fees of the arbitrators.
- 6** The parties may agree that certain days are non-business days for the purposes of a particular arbitration.

# **II. COMMENCEMENT OF ARBITRATION**

## **5. REQUEST FOR ARBITRATION**

- 1** The arbitration proceedings shall commence with the filing of the request for arbitration before the Court, which will record the corresponding date in the register maintained for that purpose.

- 2** The request for arbitration shall contain at least the following details:
  - a)** Full name, postal address, email address and other relevant details for identifying and contacting the claimant party or parties and the respondent party or parties. In particular, the request must indicate the addresses to which correspondence to all the aforesaid parties is to be sent pursuant to article 3.
  - b)** Full name, postal address, email address and other relevant details for identifying and contacting the persons who will be representing the claimant in the arbitration.
  - c)** A brief description of the dispute.
  - d)** The relief being sought and, if possible, the amount in dispute.
  - e)** The deed, contract or legal transaction from which the dispute arises or to which it is related.
  - f)** The arbitration agreement that is invoked.
  - g)** A proposal concerning the number of arbitrators and the language and place of the arbitration, assuming there was no prior agreement on this or that such agreement is sought to be amended.
  - h)** If the arbitration agreement specifies the appointment of a three-member tribunal, then the submission shall designate the corresponding choice of party-appointed arbitrator, stating his or her full name and contact details, and attaching the statement of independence and impartiality referred to in article 10.
  - i)** If a third party has provided funding or funds linked to the outcome of the arbitration, then this fact and the identity of the funder must be disclosed.
- 3** The request for arbitration may also contain a reference to the laws applicable to the merits of the dispute.
- 4** The request for arbitration must attach at least the following documents:
  - a)** A copy of the arbitration agreement or of the correspondence that shows proof of it.
  - b)** A copy of the contracts or principal instruments from which the dispute arises.
  - c)** A document naming the persons who will represent the party in the arbitration, signed by that party.
  - d)** Proof of payment of the filing fees and administrative fees of the Court, and where relevant, of any applicable advances of funds for the fees of the arbitrators.
- 5** If the request for arbitration is incomplete, or the copies or annexures are not submitted in the required number, or if the filing fees and administrative fees

of the Court are not paid or the advance of funds for the arbitrator fees, as these are fixed by the Court, is not deposited, then the Court may establish a time limit for the claimant to correct such defect or to pay said fee or advance. Once the defect has been corrected, or the fees or the advance have been paid within the time limit granted, then the request for arbitration will be deemed validly filed on the date of its initial presentation.

- 6** Once the request for arbitration has been received with all its attendant documents and copies, and after any defects have been rectified and the required fees and advance have been paid, the Court will transmit a copy of the request to the respondent without delay.

## **6. ANSWER TO THE REQUEST FOR ARBITRATION**

- 1** The respondent shall answer the request for arbitration within a period of 20 days from receipt thereof.
- 2** The answer to the request for arbitration shall contain at least the following details:
  - a)** The respondent's full name, postal address and email address, and other relevant contact and identification details; in particular, the respondent shall specify the person and address to which any correspondence that is intended for it during the arbitration must be sent.
  - b)** Full name, postal address, email address and other relevant details for identifying and contacting the persons who will be representing the respondent in the arbitration.
  - c)** Brief submissions regarding the claimant's description of the dispute.
  - d)** The respondent's position on the relief sought by the claimant.
  - e)** If the respondent objects to the arbitration, then its position on the existence, validity or applicability of the arbitration clause.
  - f)** Its position on the claimant's proposal regarding the number of arbitrators, language and place of the arbitration, assuming there was no prior agreement or that such agreement is sought to be amended.
  - g)** If the arbitration agreement specifies the appointment of a three-member tribunal, then the submission shall designate the corresponding choice of party-appointed arbitrator, stating his or her full name and contact details, and attaching the statement of independence and impartiality referred to in article 10.
  - h)** Its position on the law applying to the merits of the dispute if that question has been raised by claimant, or if it otherwise sees fit to do so.
  - i)** If a third party has provided funding or funds linked to the outcome of the arbitration, then this fact and the identity of the funder must

be disclosed.

- 3 The answer to the request for arbitration must attach at least the following documents:
  - a) A document naming the persons who will represent the party in the arbitration, signed by that party.
  - b) Proof of payment of the filing fees and administrative fees of the Court, and where relevant, of any applicable advances of funds for the fees of the arbitrators.
- 4 Once the answer to the request for arbitration has been received with all its associated documents and copies, and after the required fees and advances of funds have been paid in the amount fixed by the Court, a corresponding copy will be sent to the claimant. The correction of possible defects in the answer shall be governed by the provisions contained in article 5.5 of these Rules.
- 5 Failure to submit an answer to the request for arbitration within the allocated time limit will not suspend either the proceedings or the appointment of the arbitrators.

## **7. COUNTERCLAIM**

- 1 If the respondent seeks to file a counterclaim, it must give notice of this in the same submission made in answer to the request for arbitration.
- 2 The notice of counterclaim shall contain at least the following details:
  - a) A brief description of the dispute.
  - b) The relief that will be sought and, if possible, the amount in dispute.
- 3 The notice of counterclaim must attach, at minimum, a receipt for the payment of the fees of the Court and the advances of funds for the fees of the arbitrators, in the amount determined by the Court.
- 4 Notwithstanding the remaining applicable requirements, in order for the counterclaim to be admissible, the legal relationship on which the counterclaim is based must fall within the scope of application of the arbitration agreement and be directly related to the claim.
- 5 If a notice of counterclaim has been served, then the claimant shall prepare a preliminary answer within a period of 10 days from its receipt.
- 6 The preliminary answer to the notice of counterclaim shall contain at least

the following details:

- a) Brief submissions regarding the counterclaimant's description of the counterclaim.
- b) Its position on the relief sought by the respondent-counterclaimant.
- c) Its position on the applicability of the arbitration clause to the counterclaim, in the event that it opposes the inclusion of the counterclaim in the arbitration proceedings.
- d) Its position on the law applying to the merits of the counterclaim, if that question has been raised by the respondent-counterclaimant, or if it sees fit to do so.

## **8. PRIMA FACIE REVIEW OF THE EXISTENCE OF AN ARBITRATION AGREEMENT**

- 1 In the event that the respondent does not answer the request for arbitration, or refuses to submit to the arbitration, or raises one or more objections relating to the existence, validity or scope of the arbitration agreement, then the following alternatives may occur:
  - a) If the Court finds, *prima facie*, for the possible existence of an arbitration agreement in accordance with the Rules, it will continue with the arrangements for the arbitration proceedings (save for the advances of funds for which provision is made in these Rules), without prejudice to the admissibility or grounds of any objections that might be pleaded. In such case, any decision as to the jurisdiction of the arbitrators shall be made by the arbitrators themselves.
  - b) If the Court does not find, *prima facie*, the possible existence of an arbitration agreement in accordance with the Rules, it will notify the parties that the arbitration cannot continue.

## **9. ADVANCE OF FUNDS FOR COSTS**

- 1 The Court will fix the amount of the advance of funds for the costs of the arbitration, including any indirect taxes that may apply to them.
- 2 During the arbitration proceedings, the Court, acting *ex officio* or at the instance of the arbitrators, may request additional advances of funds from the parties.
- 3 In cases where it may be necessary to request advances of funds from the parties on several occasions, due to the filing of counterclaims or for any other reason, it shall be the Court's exclusive prerogative to determine the allocation of the payments made toward the advances.

- 4 Unless otherwise specified by the parties, the payment of said advances shall be borne in equal parts by the claimant and the respondent. If one of the parties does not pay its part, then any of the other parties may cover that payment in order for the proceedings to continue, without prejudice to the finally determined apportionment.
- 5 If at any time during the arbitration the required advances are not paid in full, the Court will notify the parties accordingly so that any of them may make the required payment within a period of 30 days. If the payment is not made within that time, then the Court may refuse to administer the arbitration, in which case, having deducted the amount corresponding to administrative expenses, it will reimburse each party for the remainder of the amounts it has deposited.
- 6 After the award is rendered, the Court will send the parties a statement of the received advances. The unused balance (if applicable) will be returned to the parties, in the proportion which corresponds to each of them.

## **III. APPOINTMENT OF THE ARBITRATORS**

### **10. INDEPENDENCE AND IMPARTIALITY**

- 1 All arbitrators must be and remain independent and impartial throughout the arbitration, and cannot maintain any personal, professional or commercial relationship with the parties.
- 2 Arbitrator candidates must sign a document in which they accept their appointment, confirm their independence, impartiality and availability, and disclose any circumstance that may give rise to justifiable doubts concerning their impartiality or independence. Said document must conform to the model proposed by the Court.
- 3 The parties may make submissions within a period of 10 days from their receipt of the arbitrator's declaration.
- 4 Arbitrators must notify both the Court and the parties in writing and without undue delay of any supervening circumstance of disclosure that occurs during the arbitration.

- 5 Decisions concerning the appointment, confirmation, challenge or replacement of arbitrators shall be final.
- 6 By virtue of accepting their appointment, arbitrators undertake to perform their role until its completion with diligence and in accordance with the terms of these Rules.

## **11. NUMBER OF ARBITRATORS AND APPOINTMENT PROCEDURE**

- 1 If the parties have not agreed upon the number of arbitrators, then the Court will decide if, in view of all the circumstances, a sole arbitrator or a three-member arbitral tribunal is called for.
- 2 As a general rule, the Court will appoint a sole arbitrator, unless the complexity of the case or the quantum of the dispute justifies the appointment of three arbitrators.

## **12. APPOINTMENT PROCEDURE FOR A SOLE ARBITRATOR**

- 1 Where the parties have agreed, or alternatively the Court has decided that a sole arbitrator is to be appointed, then the parties will be given a common time limit of 15 days in which to agree upon the appointment.
- 2 If this time limit expires without notification of an appointment, then the Court will request each party to propose, within a period of 10 days and without copying the other party, a list of three candidates. Once the Court has received said proposals, it will add the names of further candidates until a minimum of nine is reached. Subsequently the Court will grant the parties a common time limit of 10 days to indicate, without copying the other party, the names that each strikes by objection from the list, up to a maximum of one third (rounded upward), with the remaining candidates on the list numbered in the party's order of preference.
- 3 The Court will appoint the sole arbitrator from amongst the remaining names and in accordance with the parties' indicated order of preference. If for any reason an appointment cannot be made by means of this procedure, or in case of deadlock, then the Court will appoint the sole arbitrator at its own discretion.
- 4 As a general rule, in the expedited proceedings regulated in article 60 hereunder, the Court will employ the direct appointment system for the sole arbitrator.

### **13. APPOINTMENT PROCEDURE FOR AN ARBITRAL TRIBUNAL**

- 1** When the parties have agreed to appoint three arbitrators prior to the commencement of the arbitration, each party shall propose a candidate in its respective request for arbitration or answer to the request. If any party does not propose its corresponding arbitrator in the aforementioned submissions, then the Court will make the appointment directly in its place.
- 2** The third arbitrator, who will act as president of the arbitral tribunal, is to be chosen by the other two arbitrators, who will be accorded a period of 15 days in which to make said designation by mutual agreement. If the aforesaid period expires without notification of a mutually agreed designation, then the third arbitrator will be appointed by the Court in accordance with the list procedure described in article 12.2.
- 3** If, absent agreement between the parties, the Court decides to appoint a three-member tribunal, the parties will be accorded a common time limit of 15 days to enable each of them to designate its corresponding arbitrator. If the aforesaid limit expires without a party having made its designation known, then its corresponding party-arbitrator will be appointed directly by the Court. The third arbitrator will be appointed in accordance with the terms of article 12.2.

### **14. CONFIRMATION OR APPOINTMENT BY THE COURT**

- 1** Arbitrators must advise of their acceptance within 15 days following receipt of the correspondence from the Court notifying them of their appointment.
- 2** Upon appointing or confirming an arbitrator, the Court will take into account the nature and circumstances of the dispute, the nationality, location and language of the parties, in addition to the arbitrator's disclosure of circumstances and his or her availability and suitability for conducting the arbitration in accordance with the Rules.
- 3** The Court will notify the parties of any circumstance concerning a party-appointed arbitrator of which it is aware and that may affect the arbitrator's suitability, or prevent or severely impede the arbitrator's performance of his or her functions in accordance with the Rules or within the established time limits.
- 4** The Court will confirm the arbitrators who are appointed by the parties or by the other arbitrators, except where, at the Court's exclusive discretion, the relationship between an arbitrator candidate and the dispute, the parties or



their lawyers causes doubts to arise regarding his or her suitability, availability, independence or impartiality.

- 5 If a candidate proposed by the parties or the arbitrators does not obtain the confirmation of the Court, then the party or the arbitrators who proposed said candidate will be accorded a new time limit of 10 days in which to propose another. If ultimately the new candidate is also not confirmed, then the Court will proceed to make the appointment.
- 6 In international arbitration, unless the parties have the same nationality or have otherwise agreed, the sole arbitrator or tribunal president shall be of a different nationality than that of the parties, save where the circumstances suggest otherwise and none of the parties object to this within the time limit fixed for this purpose by the Court.

## **15. CHALLENGES TO ARBITRATORS**

- 1 Challenges to arbitrators based on a lack of independence, impartiality or any other reason are to be lodged with the Court in a written submission that specifies and substantiates the facts on which the challenge is based.
- 2 Challenges must be lodged within a period of 15 days from receipt of notice of the appointment or confirmation of the arbitrator, or from the date, if later, on which the party became or should have become aware of the matters forming the grounds for challenge.
- 3 The Court will transmit the statement of challenge to the challenged arbitrator and the remaining parties. If within the 10 days following transmittal the other party or the arbitrator accepts the challenge, then the challenged arbitrator shall step down and a replacement arbitrator will be appointed pursuant to the terms of article 16 of these Rules concerning replacements.
- 4 If neither the arbitrator nor the other party accepts the challenge, they must state so in a submission to the Court within a period of 10 days; subsequently the Court, once it has evaluated any evidence that has been proposed and admitted, will issue a reasoned decision on the challenge.
- 5 The arbitrators or the Court will determine how the costs of the challenge procedure are to be apportioned, taking into account all of the circumstances of the case.

## **16. ARBITRATOR REPLACEMENT AND ITS CONSEQUENCES**

- 1** Arbitrators shall be replaced in the event of death, resignation, a successful challenge, or whenever all of the parties so request.
- 2** Arbitrators may also be replaced upon the initiative of the Court or the other arbitrators, after submissions from all of the parties and the arbitrators within a common period of 10 days, in cases where an arbitrator fails to perform his or her functions in accordance with the Rules or within the established time periods, or when there is some concurrent circumstance that gravely affects his or her performance.
- 3** Irrespective of the reason for which a new arbitrator must be appointed, the appointment shall be made according to the rules regulating the appointment procedure for the vacating arbitrator. Where applicable, the Court will fix a time limit to allow the corresponding party to propose a new candidate. If said party does not propose a candidate within the allowed period, the replacement will be appointed directly by the Court.
- 4** As regards the replacement of arbitrators, as a general rule the arbitration proceedings will be resumed as of the moment the vacating arbitrator has ceased to perform his or her functions, save where the arbitral tribunal, or the Court in the case of a sole arbitrator, decides otherwise.
- 5** Upon conclusion of the procedure, instead of replacing an arbitrator the Court may, after hearing the parties and the other arbitrators within a common period of 10 days, direct the remaining arbitrators to continue with the arbitration without the appointment of a replacement.

## **17. SECRETARY**

- 1** Subject to prior consent of the parties, the president or sole arbitrator may designate a secretary who, following his or her instructions and under his or her supervision, may perform certain tasks of an administrative, organisational or supporting nature.
- 2** The secretary is appointed and removed by the president or sole arbitrator, and has the same duties of confidentiality, independence and impartiality as the arbitrators. The president or sole arbitrator will propose a candidate and provide the parties with a CV setting out the candidate's nationality, educational qualifications and professional experience, and also attach a document in which the proposed secretary confirms his or her independence, impartiality and availability.

- 3 The arbitrators shall not delegate to the secretary any decision-making or evaluative role concerning the positions of the parties in fact or in law.
- 4 The secretary shall be remunerated directly by the president or sole arbitrator from the latter's own fees, except where the parties and the co-arbitrators, prior to their appointments, agree to some other system. This does not include the secretary's travel expenses for hearings and meetings, which shall be borne by the parties.

## **IV. MULTIPLE PARTIES, MULTIPLE CONTRACTS AND CONSOLIDATION**

### **18. APPOINTMENT OF ARBITRATORS WITH MULTIPLE PARTIES**

- 1 If there are several claimant parties or respondent parties and it is appropriate to appoint three arbitrators, then the claimants shall jointly propose one arbitrator, and the respondents shall jointly propose another.
- 2 If no such joint proposal is made, and absent any agreement concerning the method for constituting the arbitral tribunal, then the Court will appoint the three arbitrators and designate one of them to act as president. In such cases the Court will ask each party to individually propose a list of at least three candidates within a period of 10 days and without copying the other parties. Once the Court has received said proposals, it will add the names of additional candidates until a minimum of 12 candidates is reached. Subsequently the Court will grant each of the parties a common time limit of 10 days to indicate, without copying the other parties, the names it strikes from the list by objection, up to a maximum of three, with the remaining candidates on the list ranked in the party's order of preference.
- 3 The Court will appoint the three arbitrators from the remaining names and in accordance with the parties' indicated order of preference. If for any reason an appointment cannot be made by means of this procedure, or in case of deadlock, the Court will appoint the three arbitrators at its own discretion.

## **19. THIRD-PARTY INVOLVEMENT**

- 1** Before the arbitral tribunal is constituted, the Court may, upon request from any of the parties or by a third-party and having heard submissions from all of them, admit such third-party's involvement in the arbitration, if all parties including the third-party so agree in writing, or if this is permitted by the arbitration agreement, subject to a reasoned evaluation of the third-party's relationship to the proceedings. The involved third-party shall participate in the appointment of the arbitrators in accordance with the preceding sections.
- 2** After the arbitral tribunal has been constituted, the Court may, upon request by any of the parties or by a third-party, and after having heard submissions from all of them, admit such third-party's involvement in the arbitration if all parties including the third-party so agree in writing. It shall be understood that, with its acceptance, the involved third-party waives its rights to participate in the appointment of the arbitrators.

## **20. MULTIPLE CONTRACTS**

- 1** In the case of disputes relating to more than one contract, the claimant may either file a request for arbitration in respect of each of the invoked arbitration agreements, and simultaneously file a request to consolidate the arbitrations pursuant to article 21 below, or it may file a single request for arbitration in respect of all of the invoked arbitration agreements, substantiating the concurrence of the consolidation criteria set forth in said article.

## **21. CONSOLIDATION**

- 1** If one party files a request for arbitration relating to a legal relationship concerning which there are already arbitration proceedings governed by the present Rules and pending between the same parties, then upon application by either party and after consultation with all parties and, if applicable, with the arbitrators, the Court may consolidate the request into the pending proceedings. In such case the Court shall take into account, amongst other particulars, the nature of the new claims, their connection with those made in the already established arbitration, and the stage reached in the proceedings.
- 2** If the Court decides to consolidate the new request into pending proceedings with an already constituted arbitral tribunal, it will be presumed that the parties waive their respective rights to nominate an arbitrator in respect of the new request.
- 3** The Court must give the reasoning for its decision on consolidation.
- 4** The Court's decision on consolidation shall be final.

## V. GENERAL ASPECTS OF THE ARBITRATION PROCEEDINGS

### 22. PLACE OF ARBITRATION

- 1 If there is no agreement between the parties, then the place of the arbitration shall be decided by the Court with regard to the circumstances of the case, and after hearing the parties.
- 2 As a general rule, hearings and meetings will be conducted in any place the tribunal considers appropriate, without such circumstance signifying a change to the place of the arbitration.
- 3 In all matters not regulated by these rules, the law applying to the arbitration agreement and the arbitration proceedings shall be the law of the place of arbitration, save where the parties have stipulated otherwise and provided that such agreement between the parties does not infringe the law of the place of the arbitration.
- 4 The award will be deemed rendered in the place of the arbitration.

### 23. LANGUAGE OF ARBITRATION

- 1 If there is no agreement between the parties, then the language of arbitration shall be determined by the arbitrators with regard to the circumstances of the case, and after hearing the parties. If the circumstances so justify, the arbitrators may decide, in a reasoned decision, that there be more than one language of arbitration.
- 2 The arbitral tribunal may order that any documents filed in their original language during the proceedings must be accompanied by a translation into the language of the arbitration.

### 24. PARTIES' LEGAL REPRESENTATIVES

- 1 The parties may be represented or advised by lawyers of their choosing. To this end, it shall suffice for the party to communicate, in the corresponding submission, the names of its representatives or lawyers, their contact details, and the capacity in which they appear. In case of doubt, the arbitrators may request reliable proof of the respective authority to act.

## 25. ARBITRATION FUNDING

- 1 In the event that any of the parties has received funds or obtained any type of funding from a third party, it must notify this fact and the identity of the third party to the arbitrators, the counterparty and the Court as soon as the funding occurs.
- 2 Subject to any rules of professional secrecy that may apply, the tribunal may request the party funded by a third-party to disclose any information it considers appropriate about said funding and about the funding entity.

## 26. ARBITRATOR POWERS

- 1 In conformity with the terms of the present Rules, the arbitrators will direct the arbitration proceedings in the manner they consider appropriate in each case, avoiding delays or unnecessary expenses so as to ensure a rapid and efficient resolution of the dispute, whilst always observing the principle of equality of the parties and giving each party a sufficient opportunity to argue its case.
- 2 The powers of the arbitrators include but are not limited to:
  - a) Amending the procedural timetable, and abbreviating or extending any time limit that is established in the present Rules, agreed between the parties, or fixed by the arbitrators, including when such limit has expired.
  - b) Deciding on the bifurcation of proceedings.
  - c) Resolving as a preliminary question and through an award, objections to the jurisdiction of the arbitrators pursuant to article 42.4 of these Rules, as well as on any claims or defences that manifestly lack legal grounds, adopting any procedural measures they consider appropriate in order to do so.
  - d) Determining the rules applicable to the case, even if these have not been pleaded by the parties, provided that the parties are afforded an opportunity to be heard on the applicability of said rules.
  - e) Deciding on the admissibility, relevance and usefulness of evidence, and excluding by reasoned decision any evidence that is irrelevant, unproductive or repetitive, or which for any other reason they consider inadmissible.
  - f) Deciding upon the time and manner in which the evidence is to be presented.
  - g) Deciding, including ex officio, on the taking of evidence.
  - h) Evaluating the evidence and apportioning the burdens of proof, including any negative inferences resulting from the conduct of a

- party or its lawyers.
- i) Directing hearings in the manner the arbitrators consider appropriate.
  - j) Deciding upon the admissibility of any supplementation, broadening or amendment of the parties' pleadings on the merits, taking into account the time when it is sought to be made.
  - k) Ordering any of the parties to produce to the arbitrators and to the other parties any documents or copies of documents that are in its possession.
  - l) Ordering any of the parties to place at the disposal of the arbitrators, the other parties and the experts appointed by the parties, any real or personal property under the party's control, including documents, goods and samples.
  - m) Adopting measures to protect trade secrets or any other type of confidential information.
  - n) Requesting additional relevant information from any of the parties concerning funding or funds linked to the outcome of the arbitration.
  - o) Adopting measures to maintain the integrity of the proceeding, including written or verbal cautions to the lawyers.
  - p) Taking into account the conduct of the parties and their lawyers when awarding costs.

## **27. PROCEDURAL RULES**

- 1 As soon as the arbitral tribunal has been formally constituted, and on the proviso that the parties have paid the required advances and provisions on costs, the Court will transmit the case file to the arbitrators.
- 2 In conformity with the terms of the present Rules, the arbitrators may direct the arbitration in the manner they consider appropriate, whilst continually respecting the right to be heard, the principle of equality of the parties, the right to reply, and affording each of the parties sufficient opportunity to present its case.
- 3 The parties may, by mutual written agreement, amend the provisions of Title V of the present Rules to their convenience, and the arbitrators must respect such amendments and direct the proceedings in accordance with what has been agreed by the parties.
- 4 Notwithstanding the preceding paragraph, the arbitrators will direct and govern the arbitration proceedings by means of procedural orders, after consulting where applicable with the parties.
- 5 Copies of any correspondence, submissions and documents that a party submits to the tribunal shall be simultaneously sent by it to the other party

and the Court. The same rule shall apply to correspondence and decisions that the arbitral tribunal addresses to the parties or to a party.

- 6 All persons participating in the arbitration proceedings shall act in accordance with the principles of confidentiality and good faith. Furthermore, they undertake to perform their functions in accordance with the Code of Best Practices of the Club Español del Arbitraje (2019). The parties and their lawyers must avoid unnecessary delays in the proceedings, and their actions may be taken into consideration by the tribunal when determining the costs of the proceeding.

## **28. LAW APPLICABLE TO THE MERITS**

- 1 The arbitrators shall decide the dispute in accordance with the rules of law elected by the parties, or failing this, in accordance with the rules of law that they consider appropriate.
- 2 Arbitrators shall only decide in equity, namely *ex aequo et bono* or as *amiable compositeur*, if they have been expressly authorised to do so by the parties.
- 3 In all cases, the arbitrators shall decide the dispute in accordance with the stipulations of the contract and taking into account commercial usages applicable to the case.

## **29. TACIT WAIVER OF CHALLENGE**

- 1 If a party, having knowledge of an infringement of one of the present Rules, the arbitration agreement or the rules agreed upon for the proceeding, proceeds with the arbitration without making timely complaint of such infringement, it shall be deemed to have waived its right to protest against it.

# **VI. PROCEDURAL PHASE**

## **30. TERMS OF REFERENCE**

- 1 Upon receiving the arbitration case file from the Court, the arbitrators, after consultation with the parties, shall issue the terms of reference which will establish, at minimum, the following particulars:



- a) Full name, description, address and other contact details for each of the parties and for all persons representing them in the arbitration.
  - b) The address where notifications or correspondence can be validly sent during the arbitration, and the means of communication to be employed.
  - c) A summary outline of the claims made and relief sought by the parties, together with the estimated amount of any quantified claim and, to the extent possible, an estimate of the monetary value of all claims.
  - d) A list of the issues of arbitration to be resolved, unless the tribunal deems this unsuitable.
  - e) Full name, address and other contact details for each of the arbitrators.
  - f) The language and the seat or place of the arbitration.
  - g) The law applicable to the merits of the dispute or, where appropriate, whether it is to be decided in equity.
- 2 The terms of reference are to be issued by the arbitrators within the 30 days following the tribunal's receipt of the case file. The Court may extend this time limit upon a reasoned request by the arbitrators, or *ex officio*.
  - 3 Once the terms of reference have been issued, no party may make new claims outside the limits fixed in the terms of reference unless so authorised by the arbitrators who, in deciding on such matters, shall take into account the nature of the new claims, the stage that the arbitration proceedings have reached, and other relevant circumstances.
  - 4 Together with the terms of reference, or immediately thereafter, the arbitrators shall render a first procedural order which includes, amongst other particulars, the procedural timetable. The procedural timetable will be established after hearing the parties, either via telephone conference, video conference, face-to-face meeting, exchange of correspondence, or any other means that the arbitrators consider appropriate in this regard.
  - 5 The arbitrators may amend the procedural timetable as many times and to such extent as they consider necessary.

## **31. STATEMENT OF CLAIM**

- 1 Once the timetable is established, if not otherwise specified therein the arbitrators will grant the claimant a period of 30 days in which to submit its statement of claim.

- 2 In the statement of claim the claimant must set forth:
  - a) The specific requests for relief that it seeks.
  - b) The facts and legal grounds on which its requests are based.
  - c) A schedule of the evidence on which it seeks to rely.
- 3 In addition, the statement of claim shall be accompanied by all documents, witness statements and expert reports on which it seeks to rely in support of its requests.

## **32. ANSWER TO THE STATEMENT OF CLAIM**

- 1 Within such time limit as fixed in the timetable or, failing this, within a period of 30 days commencing from the day after receipt of the statement of claim, the other party may file an answer to the statement of claim, which shall conform to the terms of the preceding article regarding the statement of claim.
- 2 The absence of an answer to the statement of claim shall not prevent the normal continuance of the arbitration.

## **33. COUNTERCLAIM**

- 1 In the same statement as its answer to the statement of claim, or in a separate statement if so specified, the respondent may file a counterclaim, which shall conform to the stipulations established for the statement of claim.
- 2 Within such time limit as fixed in the timetable or, failing this, within a period of 30 days commencing from the day after receipt of the answer to the statement of claim, the other party may file a statement of counterclaim, which shall conform to the stipulations applying to the statement of claim.
- 3 Unless the tribunal determines otherwise, no party may make pleadings on the merits or tender any evidence after presentation of the principal submissions (i.e., statement of claim and answer or counterclaim and answer to the counterclaim) without the prior authorisation of the tribunal.

## **34. NEW CLAIMS**

- 1 The presentation of new claims shall require the authorisation of the arbitrators who, in deciding said question, shall take into account the nature of the new claims, the stage that the proceedings have reached, and all other circumstances that may be relevant.

## **35. OTHER SUBMISSIONS**

- 1** The arbitrators will decide if the parties shall be required to make other submissions in addition to those of claim and answer, such as reply and rejoinder, and will fix the time limits for their presentation and the rules for distributing the burden of proof between the successive submissions.

## **36. EVIDENCE**

- 1** When it has been determined that only one round of pleadings shall be submitted, the claimant shall have a period of 10 days following the answer to adduce additional evidence to counter the evidence presented by the respondent in its submission. The respondent for its part shall have a period of 10 days from the aforesaid date to submit evidence limited strictly to what is necessary for countering the additional evidence presented by the claimant. The arbitrators may replace this documentary procedure by a hearing, which shall in any event be held if all the parties so request.
- 2** Each party bears the burden of proving the facts upon which it relies to assert its claims or defence.
- 3** The arbitrators will rule, by means of procedural order, upon the admissibility, relevance and usefulness of evidence that is proposed or determined *ex officio*, after hearing the parties.
- 4** The examination of the evidence will be conducted in accordance with the principle that each party is entitled to know reasonably in advance the evidence on which the other party bases its pleadings.
- 5** At any time during the proceedings, the arbitrators may ask the parties to produce documents or other evidence, which are to be presented within such time limit as may be determined for the purpose.
- 6** If a party has possession or control over a source of evidence and unjustifiably refuses to produce it or allow access to it, then the arbitrators may draw from that conduct such conclusions as they see fit with regard to the facts sought to be proven.
- 7** The arbitrators will evaluate the evidence independently, in accordance with the rules of sound judgment.

## **37. HEARINGS**

- 1** The arbitrators may resolve the dispute solely on the basis of the documents

and other evidence submitted by the parties, save where one of them requests that a hearing be held.

- 2 For the holding of a hearing, the arbitrators shall call the parties with reasonable advance notice for them to attend on the day and at the place specified.
- 3 The hearing may be held even if one of the parties, having been called with due advance notice, fails to attend without showing just cause.
- 4 Hearings shall be directed exclusively by the sole arbitrator or the president of the arbitral tribunal.
- 5 With due advance notice and after consultation with the parties, the arbitrators will establish, via the issuance of a procedural order, the rules by which the hearing will be conducted, the manner in which the witnesses or experts will be examined, and the order in which they will be called.
- 6 Hearings shall be held in camera, unless the parties agree otherwise.

## **38. WITNESSES**

- 1 For the purposes of the present Rules, a witness shall be deemed to be any person, whether a party in the arbitration or not, who gives evidence regarding his or her knowledge of any issue of fact. The parties or their lawyers may interview potential witnesses for the purpose of preparing their testimony (written or oral), provided that there are no stipulations prohibiting this in any law applicable to the case.
- 2 The arbitrators may allow the witnesses to give their testimony in writing, without prejudice to also allowing them to be examined before the arbitrators and in the presence of the parties, either orally or via any means of communication that makes their presence unnecessary. A witness shall give oral testimony whenever this is requested by one of the parties and so allowed by the arbitrators.
- 3 If a witness is called to appear at a hearing to testify and does not appear without showing just cause, then the arbitrators may take this fact into account in their evaluation of the evidence and, where applicable, deem a written statement not to have been presented, as they see fit in light of to the circumstances.
- 4 All parties may ask the witnesses any questions that they see fit, under the control of the arbitrators with regard to the relevance and usefulness thereof. The arbitrators may also address questions to the witness at any time.

## **39. EXPERT WITNESSES**

- 1** All expert witnesses shall be objective and independent. Both in their acceptances and in their reports, all experts must expressly declare that they comply with said requirements. At the same time they must disclose any circumstance that may give rise to justifiable doubts as to their objectivity and independence.
- 2** No expert witness may have a financial interest in the outcome of the arbitration.
- 3** After their opinions have been presented, all experts if so requested by the parties and provided that the arbitrators consider it appropriate, shall appear at a hearing in order for the parties and the arbitrators to examine them on the content of their expert opinions. If the expert has been appointed by the arbitrators, then the parties may also call other experts to give their opinions on the matters at issue.
- 4** The examination of experts may be performed successively or simultaneously, by way of confrontation, as determined by the arbitrators.

## **40. APPOINTMENT BY THE ARBITRATORS**

- 1** The arbitrators, after consulting the parties, may appoint one or more experts to provide opinions on specific questions.
- 2** The arbitrators are also empowered to direct any of the parties to allow the arbitrator-appointed experts access to relevant information or any documents, items or evidence that they may need to examine.
- 3** The arbitrators will serve the parties with the arbitrator-appointed expert's opinion, to allow them to make any pleadings they see fit on said opinion during the conclusions stage. The parties shall be entitled to examine any document cited by the expert in his or her opinion.
- 4** The fees and expenses of all experts appointed by the arbitrators shall be considered costs of the arbitration.

## **41. CONCLUSIONS**

- 1** After conclusion of the hearing, or if solely a documentary proceeding, after receipt of the final party submission, the arbitrators, acting within the time

limit fixed in the timetable or, failing this, within a period of 15 days, will ask the parties to simultaneously present their closing submissions.

- 2 The arbitrators may replace the procedure of written conclusions with oral summaries in a hearing, which shall in any event be held if all the parties so request.

## **42. CHALLENGE TO JURISDICTION**

- 1 The arbitrators shall be empowered to rule on their own jurisdiction, including on pleas relating to the existence or validity of the arbitration agreement or any others, the granting of which would prevent entering into the merits of the dispute.
- 2 To this effect, an arbitration agreement which forms part of a contract is deemed to be an agreement independent of the other provisions in the contract. A decision by the arbitrators that the contract is void shall not of itself result in the invalidity of the arbitration agreement.
- 3 As a general rule, objections to the jurisdiction of the arbitrators must be formulated in the answer to the request for arbitration or, at the latest, in the answer to the claim or, if applicable, the answer to the counterclaim, and will not suspend the course of the proceedings.
- 4 As a general rule, objections to the jurisdiction of the arbitrators shall be resolved, after all parties have been heard, as a preliminary issue in an award, although they may also be resolved in a reasoned decision in the final award after the proceedings have been concluded.

## **43. DEFAULT**

- 1 If the claimant does not submit its statement of claim within the time limit required without giving sufficient cause, then the proceedings will be deemed concluded.
- 2 If the respondent or the counterclaim respondent does not submit its answer within the time limit required without giving sufficient cause, then the proceedings will be ordered to continue.
- 3 If one of the parties, after having been duly called, fails to appear at the hearing without giving sufficient cause, then the arbitrator shall be empowered to continue the arbitration.
- 4 If one of the parties, after having been duly summoned to submit documents,

does not do so within the established time limits without giving sufficient cause, then the arbitrators may render the award on the basis of the evidence at their disposal.

#### **44. CONSERVATORY MEASURES**

- 1** Unless otherwise agreed by the parties, the arbitrators may, upon application by any of the parties, adopt any conservatory measures they consider necessary, giving weight to the circumstances of the case and, in particular, to the appearance of legal merit, the risks of delay, and the consequences that may flow from adopting or denying said measures. The measure shall be proportionate to the intended purpose and be the least onerous means possible to attain it.
- 2** The arbitrators may require the applicant to post sufficient security, including a counter-guarantee secured in a way that the tribunal deems sufficient.
- 3** The arbitrators shall rule on the conservatory measures after all the interested parties have been heard, without prejudice to the provisions of article 45.
- 4** The adoption of conservatory measures may take the form of a procedural order or, if so requested by any of the parties, an award.

#### **45. EX PARTE PRELIMINARY ORDERS**

- 1** Unless otherwise agreed by the parties, any party seeking a conservatory measure may, at the same time and without advising any other party, apply for an ex parte preliminary order, whereby the arbitrators order some party to refrain pro tempore from any action that might ultimately frustrate the requested conservatory measure.
- 2** The arbitrators may issue such preliminary order provided they consider that prior notice of the application for the conservatory measure entails the risk that the measure sought may be frustrated.
- 3** The arbitrators shall weigh the circumstances described in article 44.1, evaluating whether it is probable that the risks of delay will materialise in the event said preliminary order is not issued.
- 4** Immediately after having granting or dismissing the application for a preliminary order, the arbitrators will serve all the parties with the application seeking the conservatory measures and preliminary order; with the preliminary order itself, in the event it is issued; and with all the respective correspondence, including a transcript of any verbal communication.

- 5 At the same time, the arbitrators will grant the party against whom the preliminary order has been made, the opportunity to object as soon as possible.
- 6 The arbitrators shall rule without delay on any objection lodged against the preliminary order.
- 7 The arbitrators may grant a conservatory measure ratifying or amending the preliminary order, once the party against whom the preliminary order was made has been notified and has had the opportunity to object. If no such conservatory measure is ordered, then any preliminary order shall expire 20 days after its issuance.
- 8 A preliminary order shall be binding upon the parties, but is not of itself subject to judicial enforcement. Such preliminary order shall not constitute an award.

#### **46. CLOSURE OF THE PROCEEDINGS**

- 9 The arbitrators will declare the proceedings to be closed when they consider that the parties have had sufficient opportunity to argue their cases. After that date no submission, pleading or evidence may be presented unless the arbitrators, by reason of exceptional circumstances, so authorise.

## **VII. TERMINATION OF THE PROCEEDINGS AND RENDERING OF THE AWARD**

#### **47. TIME LIMIT FOR RENDERING THE AWARD**

- 1 If the parties have not agreed otherwise, the arbitrators will resolve the respective requests within the three months following the presentation of the closing submissions or, if applicable, after the final substantive submission.
- 2 By submitting to these Rules, the parties accord the arbitrators the prerogative of extending the time limit for rendering the award by a period not exceeding three months, in order to adequately conclude their task. Arbitrators shall



endeavour to avoid delays. In any event, the time limit for rendering the award may be extended by agreement between all the parties.

- 3 Notwithstanding the above, when there are concurrent exceptional circumstances the Court may, upon a reasoned request by the arbitrators or the parties, or *ex officio*, extend the time limit for rendering the award.
- 4 If an arbitrator is replaced in the final month of the time limit for rendering the award, then said limit shall be automatically extended for an additional 30 days. In the event such replacement makes it necessary to repeat certain procedures of the arbitration, then as well as the aforementioned 30 additional days, the time limit for rendering the award shall be automatically extended by the same amount of time as was previously taken to conduct the procedures that require repeating.
- 5 The time limit for rendering the award does not expire by lapse of time alone, but rather its expiry shall require the prompting of the arbitrators by one of the parties. Once prompted, the arbitrators shall have a grace period of 15 days for the timely rendering of the award.

#### **48. DELIBERATIONS, FORM, CONTENT AND NOTIFICATION OF THE AWARD**

- 1 Arbitrators will decide disputes in a single award or in as many partial awards as they consider necessary. All awards will be deemed rendered at the place of arbitration and on the date stated in the text of the award.
- 2 The award shall be rendered in writing and signed by the arbitrators. In the case of multi-member tribunals, the signatures of a majority of the arbitrators shall be sufficient or, failing this, the signature of the president, provided the reasons for the absence of said signatures are stated.
- 3 The reasoning for the award shall be given, unless the parties have agreed otherwise or the award is made by consent of the parties.
- 4 In multi-member tribunals, the award shall be adopted after a deliberation process and by unanimity or majority of the arbitrators. If there is no majority, then the president shall decide.
- 5 The deliberations of the arbitral tribunal shall be secret. The duty of secrecy shall continue after the conclusion of the proceedings.
- 6 Once a draft award has been prepared and a decision reached by a majority or by the president, every arbitrator may express his or her view in a dissenting

opinion. To do so, dissenting arbitrators must send the final text of their opinions to the arbitrators who comprise the majority, at least seven days in advance of the date fixed by the president for submitting the award to the Court for review pursuant to article 49. Dissenting opinions will not be accepted after the aforesaid time. In response to any dissenting opinion or opinions, the arbitrators who comprise the majority, or where applicable the president, may either reconsider their decision or justify their disagreement in the award.

- 7 The award shall be issued in as many original copies as the number of parties that have participated in the arbitration, plus one additional original which will be filed in the Court archives.
- 8 The award may be notarised if so requested by any party, which shall bear the necessary notarial expenses involved.
- 9 The arbitrators will serve the award on the parties through the Court, via delivery of a signed copy to each of them in the manner established in article 3. The same rule shall apply to any correction, clarification or supplement to the award.
- 10 If one or more dissenting opinions have been tendered, then the Court will serve them on the parties together with the award, provided that the law in the seat or place of the arbitration does not prevent this and that the stipulations of item 6 have been met.

#### **49. PRIOR SCRUTINY OF THE AWARD BY THE COURT**

- 1 At least 10 days prior to expiry of the time limit for rendering the award, the sole arbitrator or president shall submit a draft award to the Court. In the event that an arbitrator has provided a dissenting opinion pursuant to article 48.6, the president will attach it to the draft award.
- 2 The Court may propose formal amendments to the award and verify that the dissenting opinion complies with the principles of the secrecy of deliberations and of respectful dissent from the majority.
- 3 Equally and whilst in all cases respecting the arbitrators' freedom of decision, the Court may call their attention to aspects relating to the merits of the dispute, as well as to the determination and itemisation of the costs.
- 4 The prior scrutiny by the Court shall not signify that it assumes any responsibility whatsoever for the content of the award.

## **50. AWARD BY CONSENT OF THE PARTIES**

- 1** If during the arbitration proceedings the parties reach an agreement that brings the dispute fully or partially to an end, then the arbitrators will declare the proceedings to be terminated with respect to the agreed matters and, if both parties so request and the arbitrators see no reason for opposition, they will record said agreement in the form of an award in the terms agreed by the parties. In such case and unless otherwise agreed by the parties, the arbitrators will apply the costs criteria set forth in article 55.

## **51. CORRECTION, CLARIFICATION AND SUPPLEMENTATION OF THE AWARD**

- 1** In the 10 days following the notification of the award, unless the parties have agreed upon another time limit, any of them may apply to the arbitrators for:
  - a)** The correction of any error in calculation, reproduction, typography or of other similar nature.
  - b)** The clarification of a point or a specific part of the award.
  - c)** Supplementation of the award with respect to petitions that were made but not resolved therein.
- 2** After hearing the remaining parties over a period of 10 days, the arbitrators shall make the corresponding decision in an award within a period of 20 days.
- 3** Within the time limits stated in the preceding items, the arbitrators may proceed ex officio with the correction of errors as referred to in item a) of paragraph 1.

## **52. EFFICACY OF THE AWARD**

- 1** The award is binding upon the parties. The parties undertake to perform it without delay.
- 2** If it is possible in the place of the arbitration to lodge an appeal on the merits or on some point of the dispute, it shall be understood that in submitting to these arbitration Rules, the parties waive such appeals, provided that such waiver may be validly made in law.

## 53. OTHER FORMS OF TERMINATION

- 1 The arbitration proceedings may also terminate:
  - a) Upon withdrawal by the claimant, unless this is opposed by the respondent and the arbitrators acknowledge its legitimate interest in obtaining a definitive resolution of the dispute.
  - b) When the parties so determine by mutual agreement.
  - c) When, in the opinion of the arbitrators, the continuation of the proceedings is unnecessary or impossible.

## 54. KEEPING AND STORAGE OF THE ARBITRATION FILE

- 1 The Court shall be responsible for keeping and storing the arbitration file.
- 2 After three years have elapsed from the issuance of the award, the obligation to keep the file and associated documents shall cease, save for the award which shall be kept for a period of 30 years.
- 3 For as long as the Court's obligation to keep and store the arbitration file remains in force, any of the parties may request the detachment and return, at its own cost, of any original documents that were tendered by it.

## 55. COSTS

- 1 The arbitrators shall decide upon the costs of the arbitration in their award. The reasons for any costs order must be given.
- 2 As a general rule, costs orders shall reflect the success and the failure of the parties' respective claims, except where the parties have established a different criterion for costs allocation, or where in view of the circumstances of the case, the arbitrators consider it inappropriate to apply this general principle. When fixing the costs the arbitrators may take into account all the circumstances of the case, including the parties' cooperation or lack thereof in enabling the proceedings to be conducted in an efficient manner, avoiding delays and unnecessary costs.
- 3 The costs of the arbitration shall comprise:
  - a) The filing and administrative fees of the Court pursuant to Annex I (Fees of the Court) and, if applicable, the hiring expenses of facilities and equipment for the arbitration;
  - b) The fees and expenses of the arbitrators, which shall be fixed or approved by the Court in accordance with Annex II (Fees and

Expenses of the Arbitrators);

- c) The fees of the arbitrator-appointed experts, if applicable; and
  - d) The reasonable expenses incurred by the parties in arguing their cases in the arbitration; these shall include, amongst others, fees and expenses of legal representation, the fees and expenses of party-appointed experts, and the travel costs of legal counsel, witnesses and experts.
- 4 The reasonable expenses of the arbitrators in relation to the proceedings shall be considered part of the costs of the proceedings; the parties shall pay said expenses between them and the Court may request additional advances for this.

## **56. FEES OF THE ARBITRATORS**

- 1 The Court shall fix the fees of the arbitrators pursuant to Annex II (Fees and Expenses of the Arbitrators), taking into account the time employed by the arbitrators and all other relevant circumstance such as the early conclusion of the arbitration proceedings by consent of the parties. It may also reduce the fees payable to an arbitrator who has not performed his or her functions with due diligence or has breached his or her obligations.
- 2 Arbitrators may not receive any amount directly from the parties.
- 3 The correction, clarification or supplementing of an award pursuant to article 51 shall not entail additional fees, unless the Court identifies particular circumstances that justify this. In such cases, the additional fees shall be between 0.5% and 3% of the fees of each arbitrator.

## **57. CONFIDENTIALITY**

- 1 Unless the parties agree otherwise, the Court and the arbitrators shall be obligated to keep the arbitration and the award confidential.
- 2 The arbitrators may order such measures as they see fit to protect commercial or trade secrets or any other confidential information.
- 3 The deliberations of the arbitral tribunal, as well as the correspondence between the Court and the arbitrators in relation to the scrutiny or review of the award, are confidential.

## 58. PUBLICATION

- 1 The Court shall publish on its web page a list of the cases administered by it, indicating:
  - a) An anonymised reference to the nature of the parties;
  - b) The names of the arbitrators, their positions on the arbitral tribunal, and the manner in which they were appointed;
  - c) Any challenges lodged, and their outcome;
  - d) The administrative secretaries, if applicable;
  - e) The lawyers for the parties;
  - f) The type of contract, applicable law, and language and place of arbitration;
  - g) The dates when the arbitration commenced, the terms of reference or first procedural order were issued, and the award rendered; and,
  - h) When an award has been rendered, whether it is public or otherwise the reasons for its confidentiality.
- 2 The Court shall publish the awards rendered within a brief period following their approval, anonymising the names of the parties but retaining the names of the arbitrators and lawyers.
- 3 If a party expressly objects to publication, or if the Court considers that there are relevant grounds justifying confidentiality, then the Court may publish at least an anonymised summary or a redacted extract of such awards, whilst retaining the names of the arbitrators and the lawyers.
- 4 The Court shall publish redacted versions of its reasoned decisions on arbitrator challenges and replacements, with the names of the parties and arbitrators anonymised.

## 59. LIABILITY

- 1 Neither the Court nor the arbitrators shall be liable for any act or omission in relation to an arbitration administered by the Court, unless it is shown that there was bad faith, recklessness or malicious intent on their part.

## VIII. EXPEDITED PROCEEDING

### 60. EXPEDITED PROCEEDINGS

- 1 Expedited proceedings shall apply whenever:
  - a) The total maximum quantum of the matter is equal to or less than 1,000,000 euros, taking into account the claim and any eventual counterclaim.
  - b) The parties have not expressly specified its non-application in their arbitration agreement.
  - c) If the parties so agree, regardless of the date of the arbitration agreement and the quantum of the matter.
- 2 Any objection to the application of expedited proceedings shall be made in the request for arbitration or in the answer, and will be finally decided by the Court.
- 3 Irrespective of the foregoing stipulations, the Court may decide that expedited proceedings do not apply in view of the circumstances of the case.
- 4 Expedited proceedings shall be decided by a sole arbitrator, irrespective of any stipulation in the arbitration agreement in this regard, unless the Court, in view of the circumstances of the case and after hearing the parties, orders the appointment of an arbitral tribunal.
- 5 If the parties do not notify their designation of a sole arbitrator by mutual accord pursuant to article 12.1 of these Rules, or if the party-appointed arbitrators do not notify their designation of a president in the time limit specified in article 13.3, then the Court shall make the appointment at its own discretion.
- 6 It shall not be required to prepare terms of reference.
- 7 A telephone conference is to be held within 20 days after the case file is sent to the arbitrator, in order to discuss the efficient organisation of the proceedings.
- 8 The arbitrator may modify any of the time limits contained in the present Rules.
- 9 The arbitrator may limit the number, extent and scope of the written pleadings.

- 10 After hearing the parties, the arbitrator may order the case to be conducted on an exclusively documentary basis.
- 11 In expedited proceedings the arbitrator is not authorised to extend the time limit for rendering the award by applying article 47.2. In expedited proceedings, articles 47.3, 47.4 and 47.5 shall apply.

## **IX. EMERGENCY ARBITRATOR**

### **61. EMERGENCY ARBITRATOR**

- 1 Unless the parties have specified otherwise, any party may request the appointment of an emergency arbitrator at any time prior to the transmittal of the case file to the arbitrators.
- 2 The emergency arbitrator shall solely be empowered to adopt conservatory measures, preliminary orders, and measures for the freezing or advance taking of evidence, which owing to their nature and circumstances cannot wait until the case file is transmitted to the arbitral tribunal (“Emergency Measures”).

### **62. REQUEST FOR EMERGENCY ARBITRATOR**

- 1 A party seeking the intervention of an emergency arbitrator must make its application in writing to the Court, preferably via the established means of electronic communication.
- 2 The application for appointment of an emergency arbitrator shall contain:
  - a) Full name or business name, address and other relevant identification details for the parties, as well as the most immediate means of contacting them.
  - b) Full name or business name, address and other relevant identification and contact details for the persons who will be representing the party seeking an emergency arbitrator.
  - c) Reference to the terms of the arbitration agreement or agreements being invoked.
  - d) A brief description of the dispute between the parties that gave rise to the commencement of the arbitration proceedings.
  - e) A description of the Emergency Measures being sought.





### **63. TRANSMITTAL OF A REQUEST FOR EMERGENCY ARBITRATOR**

- 1** The Secretariat of the Court will conduct a formal examination of the content of the application for an emergency arbitrator and, if it finds that the provisions under the present Title apply, will immediately transmit the application for an emergency arbitrator and all attached documents to the party against which the petition for Emergency Measures is directed.
- 2** Applications for an emergency arbitrator will not be heard when the arbitral tribunal is already constituted and the arbitration case file has been transmitted to it, when the Court manifestly lacks jurisdiction to resolve the requested Emergency Measures, or when the application for an emergency arbitrator has not been accompanied with proof of payment of the Court's filing and administrative fees and, where relevant, of the advances of funds to cover the applicable fees of the emergency arbitrator.

### **64. APPOINTMENT OF EMERGENCY ARBITRATOR**

- 1** If applicable, the Court will appoint the emergency arbitrator at its own discretion and in the briefest time possible, which must not exceed five days.
- 2** Prior to his or her appointment, the emergency arbitrator is to send the Court a statement of independence, impartiality, availability and acceptance. The emergency arbitrator shall remain independent and impartial toward the parties for as long as he or she performs the functions of emergency arbitrator.
- 3** The appointment of the emergency arbitrator shall be notified to the parties.
- 4** The case file will be transmitted to the appointed emergency arbitrator.
- 5** From the time the emergency arbitrator is appointed, all correspondence referring to the proceedings for the adoption of Emergency Measures is to be addressed to the emergency arbitrator, with copies in all instances to be sent to the Court and to the parties and/or their representatives.

### **65. CHALLENGE TO AN EMERGENCY ARBITRATOR**

- 1** The parties may apply to challenge an emergency arbitrator within a period of three days from notification of his or her appointment, or from when they become aware of the facts and circumstances that, in their opinion, could serve as grounds for the challenge.

- 2 The Court, after granting the emergency arbitrator and the other parties a reasonable time limit in which to make written submissions on the challenge application, will decide whether to uphold the challenge.
- 3 If the challenge is upheld, then a new emergency arbitrator shall be appointed in accordance with the provisions of this Title.
- 4 The appointment procedure for a new emergency arbitrator shall not suspend the course of the proceedings, which shall continue until the corresponding decision is made. If in compliance with the procedural timetable the parties are required to file a statement before the emergency arbitrator is appointed, then said statement shall be sent to the other parties and to the Court for incorporation into the case file that the Court will transmit to the new emergency arbitrator.

## **66. EMERGENCY ARBITRATOR PROCEEDING**

- 1 Emergency arbitrators shall conduct the proceedings in the manner they consider most appropriate, taking into consideration the nature and circumstances of the Emergency Measures being sought, and especially ensuring that the parties have a reasonable opportunity to exercise their right to be heard and to reply.
- 2 Notwithstanding the above, unless the parties have agreed otherwise the emergency arbitrator may, in view of the nature of the Emergency Measures being sought, make his or her decision without hearing the party to which performance of the Emergency Measures may apply.
- 3 The emergency arbitrator shall prepare a procedural timetable and submit it to the parties and to the Court within the shortest possible time, with a period of two days after receipt of the case file being considered reasonable.
- 4 The emergency arbitrator may, if he or she sees fit, call the parties to a hearing, which may be held physically or via any communications medium. Alternatively, the emergency arbitrator shall make his or her decision on the basis of the submissions and documents tendered.

## **67. EMERGENCY ARBITRATOR DECISION**

- 1 The emergency arbitrator shall make his or her decision on the Emergency Measures within a maximum of 15 days from the transmittal of the case file. This time limit may be extended by the Court, either ex officio or upon request by the emergency arbitrator, with regard to the specific circumstances of the case.

- 2 In the decision, the emergency arbitrator will rule on his or her jurisdiction in respect of the Emergency Measures being sought; will grant the measure if he or she considers it appropriate; will determine whether a surety is required to secure the Emergency Measures; and will decide the costs of the proceedings which are to include the administrative fees of the Court, the fees and expenses of the emergency arbitrator, and the reasonable expenses incurred by the parties.
- 3 The decision of the emergency arbitrator shall be reasoned and made in the form of a procedural order, which is to be dated and signed by the emergency arbitrator before being notified directly to the parties and to the Court.
- 4 The decision of the emergency arbitrator shall be effective even if it has been rendered after the arbitral tribunal was constituted and the case file transmitted to it, provided that said decision is rendered within the established time limit pursuant to the provisions of the present Title.
- 5 The decision of the emergency arbitrator in no way entails prejudgment of the dispute between the parties, and no decision relating to the evidence in the emergency proceedings shall have any effect in the arbitration proceedings.

## **68. BINDING NATURE OF THE EMERGENCY ARBITRATOR'S DECISION**

- 1 The emergency arbitrator's decision shall be of mandatory compliance for the parties, who must perform it voluntarily and without delay following notification thereof.
- 2 The emergency arbitrator may, upon a reasoned petition by any of the parties, amend or revoke any decision made in the ambit of the application for Emergency Measures, until his or her functions cease.
- 3 The decision of the emergency arbitrator shall no longer be binding if:
  - a) So decided by the emergency arbitrator in the performance of his or her functions.
  - b) The Court orders the termination of the proceedings to hear the Emergency Measures application because the request for arbitration has not been filed within fifteen days of lodgement of the application for an emergency arbitrator, or within a longer time if so granted in a reasoned ruling by the emergency arbitrator upon request by the applicant party.
  - c) The Court upholds a challenge against the emergency arbitrator, in accordance with the provisions in this Title.

- d) The arbitrators, at a party's request, amend, suspend or revoke the decision of the emergency arbitrator.
- e) A final award is rendered in the principal proceedings, unless the award itself provides otherwise.
- f) The principal proceedings terminate in any other way.

## **69. INCREASE OF COURT AND ARBITRATOR FEES**

- 1 The Court may at any time order an increase of the fees set forth in Annexes I (Fees of the Court) and II (Fees and Expenses of the Arbitrators), taking into consideration the work effectively performed by the Court or by the emergency arbitrator, or other relevant circumstances.
- 2 If the party which requested the emergency arbitrator's appointment does not make timely payment of the increase decided by the Court, then the application shall be deemed to have been withdrawn.
- 3 In the event of an early conclusion to the proceedings, then the provisions of article 56 shall apply.

## **70. OTHER RULES**

- 1 Unless otherwise agreed by the parties, the emergency arbitrator may not act as an arbitrator in any arbitration relating to the dispute.
- 2 The arbitrators are not bound by the decisions adopted by the emergency arbitrator, including the decision on the costs of the emergency proceedings.
- 3 The parties shall be completely free to resort to the ordinary courts to apply for conservatory, interim or evidentiary seizure measures. The parties undertake to notify the Court, the emergency arbitrator and the other parties of any application for measures made before the courts, in addition to any decision ultimately adopted by a judge on such application.

# **X. CORPORATE ARBITRATION**

## **71. CORPORATE ARBITRATION**

- 1 When the object of the arbitration is a dispute within a company (of joint-stock or other kind) or a body corporate, foundation or association whose

bylaws or governing rules contain an arbitration agreement that refers administration of the proceedings to the Court, then the special rules on corporate arbitration contained in the present article shall apply.

- 2** The number of arbitrators shall be as specified in the bylaws or governing rules. Failing this, the number shall be fixed by the Court in accordance with the terms of article 11 of these Rules.
- 3** The Court will be charged with appointing the sole arbitrator, or if applicable the three arbitrators who comprise the arbitral tribunal, by application of the list procedure described in articles 12.2 and 18.2, unless once the dispute has arisen all of the parties freely agree to another appointment procedure, provided that the principle of equality is not infringed.
- 4** The Court may also postpone the appointment of the arbitrators for a reasonable period of time in cases where it considers that a single dispute may possibly give rise to successive arbitration claims.

## **XI. TRANSITORY PROVISIONS**

### **72. TRANSITORY PROVISION**

- 1** The present Rules shall enter into force on [date], after which the previous Rules shall no longer have effect.
- 2** Unless otherwise agreed by the parties, the present Rules shall apply to all arbitrations for which the request has been filed on or after the day of their entry into force.
- 3** The provisions relating to expedited proceedings and emergency arbitrators shall apply solely in arbitration proceedings commenced by virtue of arbitration agreements executed after the present Rules have entered into force.

**Annex I: Fees of the Court**

**Annex II: Fees and Expenses of the Arbitrators**

# **ANNEX B.**

## **MODEL ARBITRATION CLAUSE**

## MODEL ARBITRATION CLAUSE

It is recommended that contracts include the following model arbitration clause:

*“Any dispute arising from this contract or which relates to it, including any question relating to its existence, validity, interpretation, performance or termination, shall be subject to the decision of [one arbitrator / three arbitrators], with the administration of the arbitration and the appointment of the arbitrators to be referred to [the arbitral institution in question], in accordance with its Bylaws and Rules in force at the date when the request for arbitration is filed. The arbitration shall be in law. The language of the arbitration shall be [specify language]. The place of the arbitration shall be [city].”*

In addition, the following model article is recommended for inclusion in the corporate bylaws:

*“All disputes of a corporate nature that affect the company, its shareholders and/or its managers (including by way of example challenges to corporate resolutions, corporate and individual liability actions against management, and disputes relating to meetings of corporate bodies) shall be subject to the decision of [one arbitrator / three arbitrators], with the administration of the arbitration and the appointment of the arbitrators to be referred to [the arbitral institution in question] in accordance with its Bylaws and Rules in force at the date when the request for arbitration is filed. The arbitration shall be in law. The language of the arbitration shall be [specify language]. The place of the arbitration shall be [city].”*



# **ANNEX C.**

## **MODEL FOR ARBITRATOR ACCEPTANCE**

# MODEL FOR ARBITRATOR ACCEPTANCE

## ARBITRATOR'S ACCEPTANCE OF APPOINTMENT AND STATEMENT OF IMPARTIALITY, INDEPENDENCE AND AVAILABILITY [...]

### 1. Identification

#### 1.1. Description of the Proceedings

[...]

#### 1.2. Party [A]

Name: [...]

Lawyers<sup>1</sup>: [...]

Funder<sup>2</sup>: [...]

#### 1.3. Party [B]

Name: [...]

Lawyers<sup>3</sup>: [...]

Funder<sup>4</sup>: [...]

#### 1.4. Party [C]

Name: [...]

Lawyers<sup>5</sup>: [...]

Funder<sup>6</sup>: [...]

---

1 To be identified by Party A.

2 To be identified by Party A.

3 To be identified by Party B.

4 To be identified by Party B.

5 To be identified by Party C.

6 To be identified by Party C.

### 1.5. Arbitrators already appointed<sup>7</sup>

Name: [...]

Name: [...]

## 2. Acceptance

I accept my appointment as [...<sup>8</sup>] upon proposal by [...], and state that, to the best of my knowledge and belief, I am impartial and independent and have sufficient availability to perform this task.

I undertake to carry out my duties in accordance with the Rules and to respect the Code of Best Practice of the Club Español del Arbitraje.

## 3. Disclosures

### [First alternative]

I am not aware of any circumstance that may give rise to justifiable doubts about my impartiality and independence.

### [Second alternative]

In accordance with my duty of disclosure, I hereby advise the parties of the following circumstances, which in my opinion do not affect my impartiality and independence:

[...]

Declared at [place] on [date]

[Signature of the Arbitrator]

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<sup>7</sup> In the event they have already been appointed.

<sup>8</sup> Arbitrator or president of the arbitral tribunal.



# **ANNEX D.**

## **MODEL FOR EXPERT ACCEPTANCE**

# MODEL FOR EXPERT ACCEPTANCE

## EXPERT'S ACCEPTANCE OF APPOINTMENT [...]

### 1. Identification

#### 1.1. Description of the Proceeding

[...]

#### 1.2. Party [A]

Name: [...]

Lawyers<sup>9</sup>: [...]

#### 1.3. Party [B]

Name: [...]

Lawyers<sup>10</sup>: [...]

#### 1.4. Party [C]

Name: [...]

Lawyers<sup>11</sup>: [...]

#### 1.5. Arbitrators

Name: [...]

Name: [...]

Name: [...]

### 2. Acceptance

I accept my appointment as an expert witness upon proposal by [...], and state that, to the best of my knowledge and belief, I am objective and independent and have sufficient availability to perform this task.

---

9 To be identified by Party A.

10 To be identified by Party B.

11 To be identified by Party C.

I undertake to carry out my duties in accordance with the Rules and to respect the Code of Best Practice of the Club Español del Arbitraje.

### **3. Disclosures**

**[First alternative]**

I am not aware of any circumstance that may give rise to justifiable doubts as to my objectivity and independence.

**[Second alternative]**

In accordance with my duty of disclosure, I hereby advise the parties of the following circumstances, which in my opinion do not affect my objectivity and independence:

Declared at [place] on [date]

[Signature of Expert Witness]

cea

Club Español del Arbitraje