

RULES

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1 January 2005

CEPANI

Belgian Center
for Arbitration and Mediation
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Foreword

The Belgian Center for Arbitration and Mediation (CEPANI) was founded in 1969 on the initiative and under the auspices of the Federation of Belgium Companies (VBO/FEB) and the Belgian National Committee of the International Chamber of Commerce (ICC).

CEPANI has been active on two fronts from the beginning:

- the study and the promotion of arbitration and mediation. To this end, it has organized scientific symposiums to enhance arbitration and mediation in Belgium. CEPANI also initiated and encouraged the edition and publication of monographs and books on the subject.
- support for arbitration and mediation proceedings. As a result, CEPANI has drafted rules for arbitration, included for small claims, rules for mediation, mini-trial and technical expertise which are included in this brochure. By putting them regularly on the stocks, CEPANI aims to provide economic operators and private individuals with the tools for finding a speedy and effective resolution of their dispute.

CEPANI itself does not serve as an arbitrator or mediator; it has two functions:

- to appoint competent, diligent and independent arbitrators and mediators;
- to oversee the progress of the proceedings by resolving any legal and material difficulties that might emerge so as to meet as much as possible the expectations of the parties.

CEPANI is a national, cross-sector, independent body consisting of business leaders, corporate counsels, lawyers, notary's and university professors.

The new edition of the CEPANI rules, that shall be in force on January 1, 2005 takes into account both the applicable Belgian law on arbitration and mediation, the rules of a number of arbitration and mediation bodies abroad, in particular the rules of the ICC. CEPANI's experience as arbitration and mediation center was also taken into consideration.

In this way, CEPANI, whose authority and reputation have grown over the past decades, aims to provide increasingly efficient and effective tools that are geared to practical requirements for resolving - and even preventing - disputes.

Guy Keutgen
Chairman

This brochure is available in French, Dutch and English. It is available free of charge from the Secretariat of CEPANI, rue des Sols 8, B-1000 Brussels.
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The rules, including a German version, are also available on the CEPANI web site <http://www.cepani.be>

Définitions

In these Rules:

“Secretariat” means the secretariat of CEPANI.

“Chairman” means the chairman of CEPANI.

The “Appointments Committee” is the nomination body attached to the CEPANI. The Appointments Committee consists of three members, among which the Chairman of the CEPANI. The other two members are nominated by the Executive Committee of the CEPANI.

“Arbitral Tribunal” includes one or more arbitrators.

“Claimant” includes one or more claimants and “Respondent” includes one or more respondents.

“Award” includes inter alia, an interim; partial or final award.

**SECTION I
ARBITRATION**

Standard Arbitration clause

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

- **English**

“Any disputes arising out of or in relation with this Agreement shall be finally settled under the CEPANI Rules of Arbitration by one or more arbitrators appointed in accordance with those Rules.”

The following provisions may be added to this clause¹:

“The arbitral tribunal shall be composed of (one) or (three) arbitrators”

“The seat of the arbitration shall be (town or city)”

“The arbitration shall be conducted in the (...) language”

“The applicable rules of law are (...)”

The parties that so wish may also stipulate that the arbitration should necessarily be preceded by a mini-trial (see Section III below) or a conciliation attempt (see Section IV below).

In the event that the parties involved are not Belgian, within the meaning of Article 1717, paragraph 4 of the Judicial Code, they may also stipulate the following:

“The parties expressly exclude any application for setting aside the arbitral award”

- **French**

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

Cette clause peut être complétée par les dispositions suivantes²:

“Le tribunal arbitral sera composé (d'un) ou (de trois) arbitre(s)”

“Le siège de l'arbitrage sera (ville)”

“La langue de la procédure sera le (...)”

“Les règles de droit applicables sont (...)”

Les parties qui le souhaitent peuvent également prévoir que l'arbitrage doit nécessairement être précédé d'un mini-trial (voy. infra Section III) ou d'une tentative de médiation (voy. infra Section IV).

S'agissant de parties qui ne sont pas belges au sens de l'article 1717, al. 4 du Code judiciaire, elles peuvent en outre préciser que :

“Les parties excluent expressément toute action en annulation de la sentence arbitrale”

- **Dutch**

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

Dit type beding kan worden aangevuld met de volgende bepalingen³ :

“Het scheidsgerecht zal uit (een) of (drie) arbiters bestaan”

“De zetel van de procedure is (stad)”

“De taal van de arbitrage is (...)”

“De toepasselijke rechtsregels zijn (...)”

De partijen die dit wensen, kunnen eveneens bepalen dat de arbitrage noodzakelijkerwijs moet worden voorafgegaan door een mini-trial (zie infra Afdeling III) of een poging tot mediatie (zie infra Afdeling IV)

Wanneer het om partijen gaat die niet Belgisch zijn in de zin van artikel 1717, al. 4 van het Gerechtelijk Wetboek, kunnen zij bovendien preciseren:

“De partijen sluiten uitdrukkelijk iedere vordering tot vernietiging van de arbitrale uitspraak uit”

- **German**

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

Diese Klausel kann noch durch die folgenden Bestimmungen ergänzt werden⁴ :

“Das Schiedsgericht besteht aus (einem einzigen) oder (drei) Schiedsrichter(n)”

“Der Sitz des Schiedsverfahrens ist (Stadt)”

“Die Verfahrenssprache ist (...)”

“Die anwendbaren Rechtsregeln sind (...)”

Die Parteien können vereinbaren, dass vor Einleitung des Schiedsverfahrens ein Mini-Trial Verfahren (dazu Abschnitt III unten) oder ein Mediationsversuch (dazu Abschnitt IV unten) durchgeführt werden muss.

Wenn die am Schiedsverfahren beteiligten Parteien nicht gemäß Artikel 1717, Absatz 4 des Gerichtsgesetzbuchs als belgische Partei gelten, können sie auch folgendes vereinbaren:

“Die Parteien schließen ausdrücklich jede Aufhebungsklage gegen den Schiedsspruch aus”

⁽¹⁾ Delete as appropriate.

⁽²⁾ Biffer la mention inutile.

⁽³⁾ Schrappen wat niet past.

⁽⁴⁾ Nichtzutreffendes streichen.

SECTION I ARBITRATION

COMMENCEMENT OF THE PROCEEDINGS

Article 1 Request for Arbitration

1. A party wishing to have recourse to arbitration under the CEPANI rules shall submit its Request for Arbitration to the Secretariat.

The Request for Arbitration shall include, *inter alia*, the following information:

- a) name, first name and the name in full, description, address, telephone and fax numbers, e-mail addresses and VAT-number, if any, of each of the parties;
- b) a recital of the nature and circumstances of the dispute giving rise to the claim;
- c) a statement to the relief sought, a summary of the grounds for the claim, and, if possible, a financial estimate of the amount of the claim;
- d) all relevant information that may assist in determining the number of arbitrators and their choice in accordance with the provisions of Article 9 and any nomination of an arbitrator required thereby;
- e) any comments as to the seat of the arbitration, the language of the arbitration and the applicable rules of law.

Together with the Request, Claimant shall provide copies of all agreements, in particular the arbitration agreement, the correspondence between the parties and other relevant documents.

The Request for Arbitration and the documents annexed thereto shall be supplied in a number of copies sufficient to provide one copy for each arbitrator and one for the Secretariat.

2. Claimant shall also attach to the Request for Arbitration proof of the dispatch to Respondent of the Request and the documents annexed thereto.
3. The date on which the Secretariat receives the Request for Arbitration and the annexes thereto shall be deemed to be the date of commencement of the arbitral proceedings. The Secretariat shall confirm this date to the parties.

Article 2 Answer to the Request for Arbitration and filing of a counterclaim

1. Within one month from the date on which the Secretariat has received the Request for Arbitration and the annexes thereto,

Respondent shall send its Answer to the Request for Arbitration to the Secretariat.

The Answer shall include, *inter alia*, the following information:

- a) name, first name and the name in full, description, address, telephone and fax numbers, e-mail address and VAT-number, if any, of Respondent;
- b) its comments on the nature and circumstances of the dispute that gives rise to the claim;
- c) its response to the relief sought;
- d) its comments concerning the number of arbitrators and their choice in light of Claimant's proposals and in accordance with the provisions of article 9, as well as any nomination of an arbitrator required thereby;
- e) any comments as to the seat of the arbitration, the language of the arbitration and the applicable rules of law.

The Answer and the documents annexed thereto shall be supplied in a number of copies sufficient to provide one copy for each arbitrator and one for the Secretariat.

2. Respondent shall also attach to the Answer proof of the dispatch, within the same time limit of one month, to Claimant of the Answer and the documents annexed thereto.
3. Any counterclaim made by Respondent shall be filed with its Answer and shall include:
 - a) a recital of the nature and circumstances of the dispute that gives rise to the counterclaim.
 - b) an indication of the object of the counterclaim and, if possible, a financial estimate of the amount of the counterclaim.

Article 3 Extension of the time limit for filing the Answer

The time limit mentioned in Article 2 of these Rules may be extended, pursuant to a reasoned request of Respondent, or on its own motion, by the Secretariat.

Article 4 Lack of an apparent arbitration agreement

In the event that there is no apparent arbitration agreement, the arbitration may not proceed should Respondent not answer within the one-month period mentioned in Article 2, or should Respondent refuse arbitration in accordance with the CEPANI Rules.

Article 5 Effect of the arbitration agreement

1. When the parties agree to resort to CEPANI for arbitration, they thereby submit to the Rules, including the annexes, which are in effect on the date on which the Secretariat received the Request for Arbitration and the annexes thereto, unless they have agreed

- to submit to the Rules in effect on the date of their arbitration agreement.
2. If, notwithstanding an apparent arbitration agreement, one of the parties refuses to submit to arbitration, or fails to take part in the arbitration, the arbitration shall nevertheless proceed.
 3. If, notwithstanding an apparent arbitration agreement, a party raises one or more pleas concerning the existence, validity or scope of the arbitration agreement, the arbitration shall proceed without CEPANI deciding on the admissibility or merits of the pleas. In such case the Arbitral Tribunal shall itself rule on its jurisdiction.
 4. Unless otherwise agreed, the Arbitral Tribunal shall not cease to have jurisdiction by reason of the nullity or non-existence of the contract, provided that the Arbitral Tribunal upholds the validity of the arbitration agreement.

Article 6 Documents

All pleadings and other written communications submitted by any party, as well as all documents annexed thereto, shall be sent to each party and to each arbitrator. A copy of these communications shall be sent to the Secretariat.

A copy of any communication from the Arbitral Tribunal to the parties shall be sent to the Secretariat.

Article 7 Written notifications or communications and time limits

1. The Request for Arbitration, the Answer to the Request for Arbitration, all pleadings, the appointment of the arbitrators and the notification of the Award shall be valid if they are made by delivery against receipt, by registered mail, courier, fax or any other means of telecommunication that proves their dispatch. All other notifications and communications made pursuant to these Rules may be made by any other form of written communication.

If a party is represented by counsel, all notifications or communications shall be made to the latter, unless that party requests otherwise.

All notifications or communications shall be valid if dispatched to the last address of the party, as notified either by the party in question or by the other party.

2. A notification or communication, made in accordance with paragraph 1, shall be deemed to have been made when it is received or should have been received by the party itself, by its representative or its counsel.
3. Periods of time specified in the present Rules, shall start to run

on the day following the date a notification or communication is deemed to have been made in accordance with paragraph 2. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication has to be made the period of time shall expire at the end of the first following business day.

A notice or communication shall be treated as having been sent timely if it is dispatched in accordance with paragraph 1 prior to, or on the date of, the expiry of the time limit.

THE ARBITRAL TRIBUNAL

Article 8 General provisions

1. Only those persons who are independent of the parties and of their counsel and who comply with the rules of good conduct set out in Schedule II, may serve as arbitrators in arbitration proceedings organized by CEPANI.
2. The arbitrator who was appointed or whose nomination has been approved, shall sign a statement of independence and disclose in writing to the Secretariat any facts or circumstances which might be of such a nature so as to call into question the arbitrator's independence in the eyes of the parties. The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them.
3. An arbitrator shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature as those mentioned in paragraph 2 which may arise during the arbitration.
4. The decisions of the Appointments Committee or the Chairman as to the appointment, approval, challenge or replacement of an arbitrator shall be final. These decisions do not have to state the reasons for the decision.
5. By accepting to serve, every arbitrator undertakes to carry out his responsibilities until the end in accordance with these Rules.

Article 9 Appointment of arbitrators

1. The Appointments Committee or the Chairman shall appoint, or approve the nomination of, the arbitral tribunal in accordance with the following rules. It will thereby take into account more particularly the availability, the qualifications and the ability of the arbitrator to conduct the arbitration in accordance with these Rules.
2. Where the parties have agreed to settle their dispute through a sole arbitrator, they may appoint him by mutual consent, subject

to the approval of the Appointments Committee or the Chairman.

Should the parties fail to agree on his nomination within one month of the notification of the Request for Arbitration to Respondent, or within such additional time as may be allowed by the Secretariat, the sole arbitrator shall be automatically appointed by the Appointments Committee or by the Chairman. Where the Appointments Committee or the Chairman refuses to approve the nomination of the arbitrator, it or he shall proceed with the replacement within one month of the notification of this refusal to the parties.

3. When it has been agreed to appoint three arbitrators, each party shall nominate its arbitrator in the Request for Arbitration or in the Answer to this Request, subject to the approval of the Appointments Committee or the Chairman. Where a party refrains from nominating its arbitrator or if the latter is not approved, the Appointments Committee or the Chairman shall automatically appoint the arbitrator.

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

Where there are multiple parties, whether as Claimant or as Respondent, and where the dispute is referred to three arbitrators, the multiple Claimants, jointly, and the multiple Respondents, jointly, shall nominate one arbitrator for approval pursuant to the stipulations of the present article.

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

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

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

In these cases, Claimant shall nominate an arbitrator within a period of fifteen days from the receipt of the notification of the decision of the Appointments Committee or the Chairman, and

Respondent shall nominate an arbitrator within a period of fifteen days from the receipt of the notification of the nomination made by Claimant.

5. The Appointments Committee or the Chairman appoints or approves the nomination of the Arbitral Tribunal after the payment by the parties, or by one of them, of the advance on arbitration costs in accordance with the provisions of Article 26.

Article 10 Challenge of arbitrators

1. A challenge for reasons of any alleged lack of independence or for any other reason, shall be communicated to the Secretariat in writing and shall contain the facts and circumstances on which it is based
2. In order to be admissible the challenge must be communicated by a party either within one month of the receipt by that party of the notification of the arbitrator's appointment, or within one month of the date on which that party was informed of the facts and circumstances which it invokes in support of its challenge, whichever date is the later.
3. The Appointments Committee or the Chairman shall rule on the admissibility, and, if need be, on the merits of the challenge, after the Secretariat has given the arbitrator, the other parties and the other members of the Arbitral Tribunal, if any, an opportunity to present their comments in writing within a time period fixed by the Secretariat. These comments shall be communicated to the parties and to the arbitrators.

Article 11 Replacement of arbitrators

1. In the event of an arbitrator's death, challenge, accepted withdrawal, resignation, or if there is a cause preventing him from fulfilling his duties, or upon request of all parties, the arbitrator shall be replaced.
2. An arbitrator shall also be replaced when the Appointments Committee or the Chairman finds that the arbitrator is prevented *de jure* or *de facto* from fulfilling his duties in accordance with these Rules or within the allotted time limits.

In such event, the Appointments Committee or the Chairman shall decide on the matter after having invited the arbitrator concerned, the parties and any other members of the Arbitral Tribunal to comment in writing to the Secretariat within the time limit allotted by the latter. Such comments shall be communicated to the parties and to the arbitrators.

3. When an arbitrator has to be replaced, the Appointments Committee or the Chairman shall have discretion to decide whether or not to follow the original appointment process.

Once reconstituted, and after having invited the parties to comment, the Arbitral Tribunal shall determine if, and to what extent, prior proceedings shall be repeated.

Article 12 Multi-party arbitration

When several contracts containing a CEPANI arbitration clause give rise to disputes that are closely related or indivisible, the Appointments Committee or the Chairman is empowered to order the joinder of the arbitration proceedings.

This decision shall be taken either at the request of the Arbitral Tribunal, or, prior to any other issue, at the request of the parties or of the most diligent party, or upon CEPANI's own motion.

Where the request is granted, the Appointments Committee or the Chairman shall appoint the Arbitral Tribunal that shall decide on the disputes that have been joined. If necessary, it shall increase the number of arbitrators to a maximum of five. The Appointments Committee or the Chairman shall take its decision after having summoned the parties, and, if need be, the arbitrators who have already been appointed.

They may not order the joinder of disputes in which an interim award or an award on admissibility or on the merits of the claim has already been rendered.

THE ARBITRAL PROCEEDINGS

Article 13 Transmission of the file to the Arbitral Tribunal

Provided that the advance on arbitration costs has been fully paid, the Secretariat shall transmit the file to the Arbitral Tribunal as soon as the latter has been appointed or its nomination approved.

Article 14 Language of the arbitration

1. The language of the arbitration shall be determined by mutual agreement between the parties. Failing such an agreement, the language or languages of the arbitration shall be determined by the Arbitral Tribunal, due regard being given to the circumstances of the case and, in particular, to the language of the contract.
2. The Arbitral Tribunal shall have full authority to decide which of the parties shall bear the translation costs, if any, and to what extent.

Article 15 Seat of the arbitration

1. The Appointments Committee or the Chairman shall determine the seat of the arbitration, unless the parties have agreed otherwise.

2. Unless otherwise agreed by the parties and after having consulted with them, the Arbitral Tribunal may decide to hold its hearings and meetings at any other location that it considers appropriate.
3. The Arbitral Tribunal may deliberate at any place that it considers appropriate.

Article 16 Terms of Reference and Procedural Timetable

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

The Terms of Reference shall contain the following information:

- a) the full name, first name and description of the parties;
 - b) the addresses of the parties to which notifications or communications arising in the course of the arbitration may be validly made;
 - c) a brief recital of the circumstances of the case;
 - d) a statement of the parties' claims with an indication, to the extent possible, of the amounts claimed or counterclaimed;
 - e) unless the Arbitral Tribunal deems it to be inappropriate, a determination of the issues that are in dispute;
 - f) the full names, first names, descriptions and addresses of the arbitrator(s);
 - g) the seat of the arbitration;
 - h) any other particulars that the Arbitral Tribunal may deem to be useful.
2. The Terms of Reference must be signed by the parties and the members of the Arbitral Tribunal. The Arbitral Tribunal shall send these Terms of Reference to the Secretariat within two months of the transmission of the file.

This time limit may be extended pursuant to a reasoned request of the Arbitral Tribunal or on its own motion by the Secretariat.

If one of the parties refuses to take part in the drawing up of the Terms of Reference or to sign them, in spite of being bound by a CEPANI arbitration clause, the Arbitral Award may be rendered after the time limit set by the Secretariat to the Arbitral Tribunal for the obtaining of the missing signature has expired. This Arbitral Award shall be deemed to be contradictory.

3. When drawing up the Terms of Reference, or as soon as possible thereafter, the Arbitral Tribunal, after having consulted the parties, shall establish in a separate document a Procedural Timetable that it intends to follow for the conduct of the arbitration and shall communicate same to the Secretariat as well as to the parties. Any

- subsequent modifications of the Procedural Timetable shall be communicated to the Secretariat and to the parties.
4. The Arbitral Tribunal shall have the power to decide on an *ex aequo* basis only if the parties have authorised it to do so. In such event, the Arbitral Tribunal shall nevertheless abide by these Rules.

Article 17 Examination of the case

1. The Arbitral Tribunal shall proceed within as short a time as possible to examine the case by all appropriate means. It may, *inter alia*, obtain evidence from witnesses and appoint one or more experts.
2. The Arbitral Tribunal may decide the case solely on the basis of the documents submitted by the parties, unless the parties or one of them requests a hearing.
3. Either at the request of a party or upon its own motion, the Arbitral Tribunal, subject to the giving of reasonable notice, may summon the parties to appear before it on the day and at the place specified by it.
4. If any of the parties, although duly summoned, fails to appear, the Arbitral Tribunal shall nevertheless be empowered to proceed, provided it has ascertained that the summons was duly received by the party and that there is no valid excuse for its absence.

In any event, the Award shall be deemed to be contradictory.

5. The hearings shall not be public. Save with the approval of the Arbitral Tribunal and the parties, persons not involved in the proceedings shall not be admitted.
6. The parties shall appear in person or through duly authorized representatives or counsel.
7. New claims or counterclaims must be presented in writing. The Arbitral Tribunal may refuse to examine such new claims if it considers that they might delay the examination of, or the ruling on, the original claim, or if they are beyond the limits of the Terms of Reference. It shall consider any other relevant circumstances.

Article 18 Interim and conservatory measures

1. Without prejudice to Article 1679, paragraph 2, of the Belgian Judicial Code, each party may ask the Arbitral Tribunal, as soon as it has been appointed, to order interim or conservatory measures, including the provision of guarantees or security for costs. Any such measure shall take the form of an order, setting out the reasons for the decision, or, if the Arbitral Tribunal considers it appropriate, an Award

2. All measures ordered by the ordinary courts in relation to the dispute must be communicated immediately to the Arbitral Tribunal and to the Secretariat.

THE ARBITRAL AWARD

Article 19 Time limit for the Arbitral Award

1. The Arbitral Tribunal shall render the Award within four months of the date of the Terms of Reference mentioned in Article 16.
2. This time limit may be extended pursuant to a reasoned request from the Arbitral Tribunal, or upon its own motion, by the Secretariat.

Article 20 Award by more than one arbitrator

Where there is more than one arbitrator, the Award shall be made by a majority decision. If no majority can be reached, the chairman of the Arbitral Tribunal shall have the deciding vote.

Article 21 Award by consent

Should the parties reach a settlement after the appointment of the Arbitral Tribunal, the settlement shall be recorded in the form of an Award made by consent of the parties if so requested by the parties and if the Arbitral Tribunal agrees to do so.

Article 22 Making of the Award

The Arbitral Award is deemed to be made at the seat of the arbitration and on the date stated in the Award.

Article 23 Notification of the Award to the parties; Deposit of the Award

1. Once the Award has been made, the Arbitral Tribunal shall transmit it to the Secretariat in as many original versions as there are parties involved, plus one original version for the Secretariat.
2. The Secretariat shall notify the original signed Award to the parties, provided that the arbitration costs have been fully paid to the CEPANI by the parties or by one of them.
3. Solely if one of the parties files a request thereto at the Secretariat, within a period of one month from the notification of the Award, the Award shall be filed at the registry of the Civil Court of the seat of the arbitration.

Article 24 Final nature and enforceability of the Award

1. The Award is final and is not subject to appeal. The parties undertake to comply with the Award without delay.
2. By submitting their dispute to arbitration under CEPANI Rules and except where an explicit waiver is required by law, the parties waive their right to any form of recourse insofar as such a waiver can validly be made.

ARBITRATION COSTS**Article 25 Nature and amount of the arbitration costs**

1. The arbitration costs shall include the fees and expenses of the arbitrators, as well as the administrative expenses of the Secretariat. They shall be fixed by the Secretariat on the basis of the amount of the principal claim and of any counterclaim, according to the Scale of Arbitration Costs in effect on the date on which the Secretariat has received the Request for Arbitration and the annexes thereto.
2. Other costs and expenses relating to the arbitration, such as the fees and expenses of any experts appointed by the Arbitral Tribunal or the expenses incurred by the parties, are not included in the arbitration costs. The Arbitral Tribunal can decide about such costs or expenses.
3. The Secretariat may fix the arbitration costs at a higher or lower figure than that which would result from the application of the Scale of Arbitration Costs, should this be deemed necessary due to the exceptional circumstances of the case.
4. If the amount in dispute is not specified, totally or partially, the Secretariat, may determine, taking into account all available information, the amount in dispute on the basis of which the arbitration costs will be calculated.
5. The Secretariat may adjust the amount of the arbitration costs at any time during the proceedings if the circumstances of the case or if new claims reveal that the scope of the dispute is greater than originally considered

Article 26 Advance on arbitration costs

1. The advance required to cover the arbitration costs, as determined in accordance with Article 25, paragraph 1 shall be paid to CEPANI prior to the appointment or the approval of the nomination of the Arbitral Tribunal by the Appointments Committee or the Chairman.
2. Further advance payments may be required if and when any adjustments are made to the arbitration costs in the course of the proceedings.

3. The advance on arbitration costs, as well as the additional advance on arbitration costs, shall be payable in equal shares by Claimant and Respondent. However, any party shall be free to pay the whole of the advance on arbitration costs should the other party fail to pay its share.
4. Where a counterclaim is filed, the Secretariat may, at the request of the parties or one of them, or on its own motion, fix separate advances on arbitration costs for the principal claim and the counterclaim.

When the Secretariat has set separate advances on arbitration costs, each of the parties shall pay the advance on arbitration costs corresponding to its principal or counterclaim. The Arbitral Tribunal shall proceed only with respect to those claims or counterclaims in regard to which the whole of the advance on arbitration costs has been fully paid.
5. When the advance on arbitration costs exceeds € 50.000,00 a bank guarantee may be posted to cover such payment.
6. When a request for an additional advance on arbitration costs has not been complied with, and after consultation with the Arbitral Tribunal, the Secretariat may direct the Arbitral Tribunal to suspend its work and set a time limit, which must be not less than fifteen days, on the expiry of which the relevant claims or counterclaims on the basis of which the additional advance was calculated shall be considered as withdrawn. A party shall not be prevented on the grounds of such a withdrawal from reintroducing the same claim or counterclaim at a later date in another proceeding.

Article 27 Decisions on arbitration costs

1. The arbitration costs shall be finally fixed by the Secretariat.
2. The Final Award shall mention the arbitration costs, as determined by the Secretariat, and decide which of the parties shall bear them or in what proportion they shall be borne by the parties. When the parties have reached an agreement on the allocation of the arbitration costs, the Award shall record such agreement.

ADDITIONAL PROVISIONS

Article 28 General rule

Unless otherwise agreed by the parties, all issues that are not specifically provided for herein shall be subject to Chapter VI of the Belgian Judicial Code.

**SECTION II
ARBITRATION OF DISPUTES
OF LIMITED
FINANCIAL IMPORTANCE**

SECTION II ARBITRATION OF DISPUTES OF LIMITED FINANCIAL IMPORTANCE

PRELIMINARY PROVISIONS

Article 1 **Scope**

1. Section II shall apply if the principal claim and the counterclaim, if any, together do not exceed the amount of € 12.500,00.
2. In the event that the principal claim and the counterclaim together exceed € 12.500,00 in the course of the proceedings, Section II of the Rules shall still apply, unless otherwise agreed by the parties, in which case the proceedings shall be governed by the Arbitration Rules set out in Section I of these Rules.

Article 2 **Terminology**

In this Section, the words “*Arbitral Tribunal*” shall mean the sole Arbitrator appointed or whose nomination was approved by the Appointments Committee or by the Chairman in accordance with the following provisions.

COMMENCEMENT OF THE PROCEEDINGS

Article 3 **Request for Arbitration of disputes of limited financial importance**

1. A party wishing to have recourse to arbitration of disputes of limited financial importance under the CEPANI rules shall submit its Request for Arbitration to the Secretariat.

The Request for Arbitration shall include, inter alia, the following information:

- a) name, first name and the name in full, description, address, telephone and fax numbers, e-mail addresses and VAT-number, if any, of each of the parties;
- b) a recital of the nature and circumstances of the dispute giving rise to the claim;
- c) a statement of the relief sought, a summary of the grounds for the claim, and, if possible, a financial estimate of the amount of the claim;
- d) any comments as to the seat of the arbitration, the language of the arbitration and the applicable rules of law.

Together with the Request, Claimant shall provide copies of all

agreements, in particular the arbitration agreement, the correspondence between the parties and other relevant documents.

The Request for Arbitration and the documents annexed thereto shall be supplied in two copies.

2. Claimant shall also attach to the Request for Arbitration proof of the dispatch to Respondent of the Request and the documents annexed thereto.
3. The date on which the Secretariat receives the Request for Arbitration and the annexes thereto, shall be deemed to be the date of commencement of the arbitral proceedings. The Secretariat shall confirm this date to the parties.

Article 4 Answer to the Request for Arbitration and filing of a counterclaim

1. Within twenty-one days from the date on which the Secretariat has received the Request for Arbitration and the annexes thereto, Respondent shall send its Answer to the Request for Arbitration to the Secretariat.

The Answer shall include, inter alia, the following information:

- a) name, first name and the name in full, description, address, telephone and fax numbers, e-mail address and VAT-number, if any, of Respondent;
- b) its comments as to the nature and circumstances of the dispute that gives rise to the claim;
- c) its response to the relief sought;
- d) any comments as to the seat of the arbitration, the language of the arbitration and the applicable rules of law.

The Answer and the documents annexed thereto shall be supplied in two copies.

2. Respondent shall also attach to the Answer proof of the dispatch, within the same time limit of twenty-one days, to Claimant of the Answer and the documents annexed thereto.
3. Any counterclaim made by Respondent shall be filed with its Answer and shall include:
 - a) a recital of the nature and circumstances of the dispute that gives rise to the counterclaim.
 - b) an indication of the object of the counterclaim and, if possible, a financial estimate of the amount of the counterclaim.
4. The time limit mentioned in paragraph 1 may be extended pursuant to a reasoned request of Respondent, or on its own motion, by the Secretariat.

Article 5 Exchange of memoranda

1. Within twenty-one days from the date on which Respondent submits its Answer and the annexes thereto to the Secretariat, Claimant shall submit a Reply to the Secretariat and transmit said Reply at the same time to Respondent.
2. Within twenty-one days from the date on which Claimant has submitted its Reply and the annexes thereto to the Secretariat, Respondent shall submit a Second Reply to the Secretariat and transmit said Second Reply at the same time to Claimant.
3. Subsequently, Claimant shall have a period of fourteen days from the date on which Respondent has submitted its Second Reply to the Secretariat during which it may itself submit a Second Reply to the Secretariat and transmit said Second Reply at the same time to Respondent.
4. Finally, Respondent shall have a period of fourteen days from the date on which Claimant has submitted its Second Reply to the Secretariat during which it may submit a Last Reply to the Secretariat and transmit said Last Reply at the same time to Claimant.
5. These time limits may be extended pursuant to a reasoned request of the parties or one of them. Any demand for extension shall be directed to the Arbitral Tribunal, if constituted, or to the Secretariat. If necessary, the Secretariat may extend these time limits upon its own motion.

Article 6 Lack of an apparent arbitration agreement

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

Article 7 Effect of the arbitration agreement

1. When the parties agree to resort to CEPANI for arbitration, they thereby submit to the Rules, including the annexes, which are in effect on the date on which the Secretariat received the Request for Arbitration and the annexes thereto, unless they have agreed to submit to the Rules in effect on the date of their arbitration agreement.
2. If, notwithstanding an apparent arbitration agreement, one of the parties refuses to submit to arbitration, or fails to take part in the arbitration, the arbitration shall nevertheless proceed.
3. If, notwithstanding an apparent arbitration agreement, a party raises one or more pleas concerning the existence, validity or scope of the arbitration agreement, the arbitration shall proceed without CEPANI deciding on the admissibility or merits of the

- pleas. In such case the Arbitral Tribunal shall itself rule on its jurisdiction.
4. Unless otherwise agreed, the Arbitral Tribunal shall not cease to have jurisdiction by reason of the nullity or the non-existence of the contract, provided that the Arbitral Tribunal upholds the validity of the arbitration agreement.

Article 8 Documents

All pleadings and other written communications submitted by any party, as well as all documents annexed thereto, shall be sent to each party and to the arbitrator. A copy of these communications shall be sent to the Secretariat.

A copy of any communication from the Arbitral Tribunal to the parties shall be sent to the Secretariat.

Article 9 Written notifications or communications and time limits

1. The Request for Arbitration, the Answer to the Request for Arbitration, all pleadings, the appointment of the arbitrator and the notification of the Award shall be valid if they are made by delivery against receipt, by registered mail, courier, fax or any other means of telecommunication that proves their dispatch. All other notifications and communications made pursuant to these Rules may be made by any other form of written communication.

If a party is represented by counsel, all notifications or communications shall be made to the latter, unless that party requests otherwise.

All notifications or communications shall be valid if dispatched to the last address of the party, as notified either by the party in question or by the other party.

2. A notification or communication, made in accordance with paragraph 1, shall be deemed to have been made when it is received or should have been received by the party itself, by its representative or its counsel.
3. Periods of time specified in the present Rules, shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with paragraph 2. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication has to be made, the period of time shall expire at the end of the first following business day.

A notice or communication shall be treated as having been sent timely if it is dispatched in accordance with paragraph 1 prior to, or on the date of, the expiry of the time limit.

THE ARBITRAL TRIBUNAL

Article 10 General provisions

1. Only those persons who are independent of the parties and of their counsel and who comply with the rules of good conduct set out in Schedule II, may serve as arbitrators in arbitration proceedings organized by CEPANI.
2. The Appointments Committee or the Chairman shall appoint or approve the nomination of the Arbitral Tribunal. The parties may nominate the Arbitral Tribunal by mutual consent, subject to the approval of the Appointments Committee or the Chairman.
3. The arbitrator who was appointed or whose nomination has been approved, shall sign a statement of independence and disclose in writing to the Secretariat any facts or circumstances which might be of such a nature so as to call into question the arbitrator's independence in the eyes of the parties. The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them.
4. An arbitrator shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature as those mentioned in paragraph 3 which may arise during the arbitration.
5. The decisions of the Appointments Committee or the Chairman as to the appointment, approval, challenge or replacement of an arbitrator shall be final. These decisions do not have to state the reasons for the decision.
6. By accepting to serve, every arbitrator undertakes to carry out his responsibilities until the end in accordance with these Rules.

Article 11 Appointment of the Arbitral Tribunal

The Appointments Committee or the Chairman appoints or approves the nomination of the Arbitral Tribunal within a period of eight days from the payment by the parties, or by one of them, of the advance on arbitration costs in accordance with the provisions of Article 26. It will thereby take into account more particularly the availability, the qualifications and the ability of the Arbitrator to conduct the arbitration in accordance with these Rules.

Article 12 Challenge of the arbitrator

1. A challenge for reasons of any alleged lack of independence or for any other reason, shall be communicated to the Secretariat in writing and shall contain the facts and circumstances on which it is based
2. In order to be admissible the challenge must be communicated by a party, either within one month of the receipt by that party of the notification of the arbitrator's appointment, or within one month of

the date on which that party was informed of the facts and circumstances which it invokes in support of its challenge, whichever date is the later.

3. The Appointments Committee or the Chairman shall rule on the admissibility, and, if need be, on the merits of the challenge, after the Secretariat has given the arbitrator, the other parties, an opportunity to present their comments in writing within a time period fixed by the Secretariat. These comments shall be communicated to the parties and to the arbitrator.

Article 13 Replacement of the arbitrator

1. In the event of an arbitrator's death, challenge, accepted withdrawal, resignation, or if there is a cause preventing him from fulfilling his duties, or upon request of all parties, the arbitrator shall be replaced.
2. An arbitrator shall also be replaced when the Appointments Committee or the Chairman finds that the arbitrator is prevented de jure or de facto from fulfilling his duties in accordance with these Rules or within the allotted time limits.

In such event, the Appointments Committee or the Chairman shall decide on the matter after having invited the arbitrator and the parties to comment in writing to the Secretariat within the time limit allotted by it. Such comments shall be communicated to the parties and to the arbitrator.

3. When an arbitrator has to be replaced, the Appointments Committee or the Chairman shall have discretion to decide whether or not to follow the original appointment process.

Once reconstituted, and after having invited the parties to comment, the Arbitral Tribunal shall determine if, and to what extent, prior proceedings shall be repeated.

Article 14 Multi-party arbitration

When several contracts containing the CEPANI arbitration clause give rise to disputes that are closely related or indivisible, the Appointments Committee or the Chairman is empowered to order the joinder of the arbitration proceedings.

This decision shall be taken either at the request of the Arbitral Tribunal, or, prior to any other issue, at the request of the parties or of the most diligent party, or upon CEPANI's own motion.

The Appointments Committee or the Chairman shall make its decision after having summoned the parties, and, if need be, the arbitrator who has already been appointed.

They may not order the joinder of disputes in which an interim award or an award on admissibility or on the merits of the claim has already been rendered.

THE ARBITRAL PROCEEDINGS

Article 15 Transmission of the file to the Arbitral Tribunal

Provided that the advance on arbitration costs has been fully paid, the Secretariat shall transmit the file to the Arbitral Tribunal as soon as the latter has been appointed or its nomination approved.

Article 16 Language of the arbitration

1. The language of the arbitration shall be determined by mutual agreement between the parties. Failing such an agreement, the language or languages of the arbitration shall be determined by the Arbitral Tribunal, due regard being given to the circumstances of the case and, in particular, to the language of the contract.
2. The Arbitral Tribunal shall have full authority to decide which of the parties shall bear the translation costs, if any, and to what extent.

Article 17 Seat of the arbitration

1. The Appointments Committee or the Chairman shall determine the seat of the arbitration, unless the parties have agreed otherwise.
2. Unless otherwise agreed by the parties and after having consulted with them, the Arbitral Tribunal may decide to hold its hearings and meetings at any other location that it considers appropriate.
3. The Arbitral Tribunal may deliberate at any place that it considers appropriate.

Article 18 Examination of the case

1. The Arbitral Tribunal shall proceed within as short a time as possible to examine the case by all appropriate means. It may, inter alia, obtain evidence from witnesses and appoint one or more experts.
2. The Arbitral Tribunal may decide the case solely on the basis of the documents submitted by the parties, unless the parties or one of them requests a hearing.
3. Either at the request of a party or upon its own motion, the Arbitral Tribunal, subject to the giving of reasonable notice, may summon the parties to appear before it on the day and at the place specified by it.
4. If any of the parties, although duly summoned, fails to appear, the Arbitral Tribunal shall nevertheless be empowered to proceed, provided it has ascertained that the summons was duly received by the party and that there is no valid excuse for its absence.

- In any event, the Award shall be deemed to be contradictory.
5. The hearings shall not be public. Save with the approval of the Arbitral Tribunal and the parties, persons not involved in the proceedings shall not be admitted.
 6. The parties shall appear in person or through duly authorized representatives or counsel.
 7. New claims or counterclaims must be presented in writing. The Arbitral Tribunal may refuse to examine such new claims if it considers that they might delay the examination or the ruling on the original claim. It shall consider any other relevant circumstances.

Article 19 Interim and conservatory measures

1. Without prejudice to Article 1679, paragraph 2, of the Belgian Judicial Code, each party may ask the Arbitral Tribunal, as soon as it has been appointed, to order interim or conservatory measures, including the provision of guarantees or security for costs. Any such measure shall take the form of an order, setting out the reasons for the decision, or, if the Arbitral Tribunal considers it appropriate, an Award
2. All measures ordered by the ordinary courts in relation to the dispute must be communicated immediately to the Arbitral Tribunal and to the Secretariat.

THE ARBITRAL AWARD

Article 20 Time limit for the Arbitral Award

1. The Arbitral Tribunal shall render the Award within twenty-one days of the date on which the Last Reply was submitted to the Secretariat or, if the proceedings are not based solely on documents, of the date of the last hearing.
2. This time limit may be extended pursuant to a reasoned request from the Arbitral Tribunal, or upon its own motion, by the Secretariat.

Article 21 Award by consent

Should the parties reach a settlement after the appointment of the Arbitral Tribunal, the settlement shall be recorded in the form of an Award made by consent of the parties if so requested by the parties and if the Arbitral Tribunal agrees to do so.

Article 22 Making of the Award

The Arbitral Award is deemed to be made at the seat of the arbitration and on the date stated in the Award.

Article 23 Notification of the Award to the parties; Deposit of the Award

1. Once the Award has been made, the Arbitral Tribunal shall transmit it to the Secretariat in as many original versions as there are parties involved, plus one original version for the Secretariat
2. The Secretariat shall notify the Award, signed by the Arbitral Tribunal, to the parties, provided that the arbitration costs have been fully paid to the CEPANI by the parties or by one of them.
3. Solely if one of the parties files a request thereto at the Secretariat, within a period of one month from the notification of the Award, the Award shall be filed at the registry of the Civil Court of the seat of the arbitration.

Article 24 Final nature and enforceability of the Award

1. The Award is final and is not subject to appeal. The parties undertake to comply with the Award without delay.
2. By submitting their dispute to arbitration under CEPANI Rules and except where an explicit waiver is required by law, the parties waive their right to any form of recourse insofar as such a waiver can validly be made.

ARBITRATION COSTS**Article 25 Nature and amount of the arbitration costs**

1. The arbitration costs shall include the fees and expenses of the Arbitrator, as well as the administrative expenses of the Secretariat. They shall be fixed by the Secretariat on the basis of the amount of the principal claim and of any counterclaim, according to the Scale of Arbitration Costs in effect on the date on which the Secretariat has received the Request for Arbitration and the annexes thereto.
2. Other costs and expenses relating to the arbitration, such as the fees and expenses of any experts appointed by the Arbitral Tribunal or the expenses incurred by the parties, are not included in the arbitration costs. The Arbitral Tribunal can decide about such costs or expenses.
3. The Secretariat may fix the arbitration costs at a higher or lower figure than that which would result from the application of the Scale of Arbitration Costs, should this be deemed necessary due to the exceptional circumstances of the case.
4. Should the amount in dispute exceed € 12.500,00 in the course of the proceedings, the Secretariat may increase the amount of the arbitration costs in accordance with the Scale of Arbitration Costs.

Article 26 Advances on arbitration costs

1. The advance required to cover the arbitration costs as determined in accordance with Article 25, paragraph 1 shall be paid to CEPANI prior to the appointment or the approval of the nomination of the Arbitral Tribunal by the Appointments Committee or the Chairman.
2. Further advance payments may be required if and when any adjustments are made to the arbitration costs in the course of the proceedings.
3. The advance on arbitration costs, as well as the additional advance on arbitration costs shall be payable in equal shares by Claimant and Respondent. However, any party shall be free to pay the whole of the advance on arbitration costs should the other party fail to pay its share.
4. Where a counterclaim is filed, the Secretariat may, at the request of the parties or one of them, or upon its own motion, fix separate advances on arbitration costs for the principal claim and the counterclaim.

When the Secretariat has set separate advances on arbitration costs, each of the parties shall pay the advance on arbitration costs corresponding to its principal or counterclaim. The Arbitral Tribunal shall proceed only with respect to those claims or counterclaims in regard to which the whole of the advance on arbitration costs has been fully paid.

5. When a request for an additional advance on arbitration costs has not been complied with, and after consultation with the Arbitral Tribunal the Secretariat may direct the Arbitral Tribunal to suspend its work and set a time limit, which must be not less than fifteen days, on the expiry of which the relevant claims or counterclaims on the basis of which the additional advance is calculated shall be considered as withdrawn. A party shall not be prevented on the grounds of such a withdrawal from reintroducing the same claim or counterclaim at a later date in another proceeding.

Article 27 Decision on arbitration costs

1. The arbitration costs shall be finally fixed by the Secretariat.
2. The final award shall mention the arbitration costs, as determined by the Secretariat, and decide which of the parties shall bear them or in what proportion they shall be borne by the parties. When the parties have reached an agreement on the allocation of the arbitration costs, the Award shall record such agreement.

ADDITIONAL PROVISIONS

Article 28 General rule

Unless otherwise agreed by the parties, all issues that are not specifically provided for herein shall be subject to Chapter VI of the Belgian Judicial Code.

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SECTION III
MINI-TRIAL

Standard mini-trial clause

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

- **English**

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

The following provisions may be added to this clause:

“the seat of the mini-trial shall be (town or city)”

“the mini-trial shall be conducted in the (...) language”

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

- **French**

“Les parties s’engagent à faire application, pour tous différends découlant du présent contrat ou en relation avec celui-ci, du règlement de mini-trial du CEPANI.”

Cette clause peut être complétée par les dispositions suivantes:

“le siège du mini-trial sera (ville)”

“la langue du mini-trial sera le (...)”

“en cas d’échec de la procédure de mini-trial, le différend sera définitivement tranché suivant le règlement d’arbitrage du CEPANI par un ou plusieurs arbitres nommés conformément à ce règlement.”

- **Dutch**

“De partijen verbinden zich ertoe voor ieder geschil dat uit of met betrekking tot deze overeenkomst mocht ontstaan, het mini-trial reglement van CEPINA toe te passen.”

Dit type beding kan worden aangevuld met de volgende bepalingen:

“de zetel van de mini-trial is (stad)”

“de taal van de mini-trial is (...)”

“indien de mini-trial niet lukt, zal het geschil definitief beslecht worden overeenkomstig het arbitragereglement van CEPINA, door één of meerdere arbiters benoemd conform dit reglement”

- **German**

“Die Parteien verpflichten sich dazu, bei allen aus oder in Zusammenhang mit dem gegenwärtigen Vertrag sich ergebenden Streitigkeiten die Mini-Trial–Ordnung des CEPANI anzuwenden.”

Diese Klausel kann noch durch die folgenden Bestimmungen ergänzt werden:

“der Sitz des Verfahrens ist (Stadt)”

“die Verfahrenssprache ist (...)”

“sollte das Mini-Trial erfolglos bleiben, wird die Streitigkeit nach der Schiedsgerichtsordnung des CEPANI von einem oder mehreren gemäß dieser Ordnung ernannten Schiedsrichtern endgültig entschieden”

SECTION III MINI-TRIAL

PRELIMINARY PROVISIONS

Article 1 Scope

1. Section III shall apply to disputes between parties that have a written agreement to settle their dispute by means of a Mini-trial.
2. Said agreement may be set forth in a clause of the contract or entered into after the dispute has arisen.

Article 2 Terminology

1. The Chairman of the Mini-trial Committee is empowered to bring the parties to sign an agreement putting an end to their dispute. He shall attempt to reach this agreement by consulting with his assessors.
2. The assessors are senior officials nominated by each party and whose task is to reach an agreement on the dispute in the name and on behalf of the parties who nominated them and under the guidance of the Chairman of the Mini-trial Committee. The assessor may be the chief executive of the company himself or a senior executive, or he may be a third party, such as a lawyer or any other person of trust authorized by the party concerned to enter into commitments on its behalf.

Article 3 Confidentiality

1. The members of the Mini-trial Committee, the parties and their counsel, shall be bound by a duty of strict confidentiality.
2. Under no circumstances may any mention be made in arbitral or judicial proceedings of anything which has been done, said or written with a view to obtaining a settlement that eventually is not achieved.

COMMENCEMENT OF THE PROCEEDINGS

Article 4 Request for Mini-trial

1. A party wishing to have recourse to Mini-trial under the CEPANI rules shall submit its Request for Mini-trial to the Secretariat.
The Request for Mini-trial shall include, *inter alia*, the following information:

- a) name, first name and the name in full, description, address, telephone and fax numbers, e-mail addresses and VAT-number, if any, of each of the parties;
- b) a recital of the nature and circumstances of the dispute giving rise to the claim;
- c) a statement to the relief sought, a summary of the grounds for the claim, and, if possible, a financial estimate of the amount of the claim;
- d) name, first name and the name in full, description, address, telephone and fax numbers of the assessor appointed by Claimant to sit on the Mini-trial Committee;
- e) any comments as to the seat of the Mini-trial, the language of the Mini-trial and the applicable rules of law.

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

The Request for Mini-trial and the documents annexed thereto shall be supplied in four copies.

2. Claimant shall also attach to the Request for Mini-trial proof of the dispatch to Respondent of the Request and the documents annexed thereto.
3. The date on which the Secretariat receives the Request for Mini-trial and the annexes thereto shall be deemed to be the date of commencement of the Mini-trial proceedings. The Secretariat shall confirm this date to the parties.

Article 5 Answer to the Request for Mini-trial and filing of a counterclaim

1. Within twenty-one days from the date on which the Secretariat has received the Request for Mini-trial and the annexes thereto, Respondent shall send its Answer to the Request for Mini-trial to the Secretariat.

The Answer shall include, inter alia, the following information:

- a) name, first name and the name in full, description, address, telephone and fax number, e-mail address and VAT-number, if any, of Respondent;
- b) its comment on to the nature and circumstances of the dispute that gives rise to the claim;
- c) its response to the relief sought;
- d) name, first name, description, address, telephone and fax number of the assessor nominated by the Respondent to sit in the Mini-trial Committee;

e) any comments as to the seat of the Mini-trial, the language of the Mini-trial and the applicable rules of law.

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

The Answer and the documents annexed thereto shall be supplied in four copies.

2. Respondent shall also attach to the Answer proof of the dispatch, within the same time limit of twenty-one days, to Claimant of the Answer and the documents annexed thereto.
3. Any counterclaim made by Respondent shall be filed with its Answer and shall include:
 - a) a recital of the nature and circumstances of the dispute that gives rise to the counterclaim.
 - b) an indication of the object of the counterclaim and, if possible, a financial estimate of the amount of the counterclaim.
4. This time limit may be extended pursuant to a reasoned request of Respondent, or on its own motion, by the Secretariat.

Article 6 Lack of an apparent Mini-trial agreement

In the event that there is no apparent Mini-trial agreement, the Mini-trial may not proceed should Respondent not answer within the period of twenty-one days mentioned in Article 5, or should Respondent refuse Mini-trial in accordance with the CEPANI Rules.

Article 7 Effect of the Mini-trial agreement

1. When the parties agree to resort to CEPANI for a Mini-trial, they thereby submit to the Rules, including the annexes which are in effect on the date on which the Secretariat received the Request for Mini-trial and the annexes thereto, unless they have agreed to submit to the Rules in effect on the date of their Mini-trial agreement.
2. Unless otherwise agreed by the parties, the Mini-trial shall proceed in accordance with the provisions of these Rules.
3. If necessary, and after having consulted with his assessors, the Chairman of the Mini-trial Committee may depart from the Rules set forth herein.

Article 8 Written notifications or communications and time limits

1. The Request for Mini-trial, the Answer to the Request for Mini-trial, all pleadings, the appointment of the Mini-trial Committee shall be valid if they are made by delivery against receipt, by reg-

istered mail, courier, fax or any other means of telecommunication that proves their dispatch. All other notifications and communications made in pursuant to these Rules may be made by any other form of written communication.

If a party is represented by counsel, all notifications or communications shall be made to the latter, unless that party requests otherwise.

All notifications or communications shall be valid if dispatched to the last address of the party, as notified either by the party in question or by the other party.

2. A notification or communication, made in accordance with paragraph 1, shall be deemed to have been made when it is received or should have been received by the party itself, by its representative or its counsel.
3. Periods of time specified in the present Rules, shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with paragraph 2. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication has to be made, the period of time shall expire at the end of the first following business day.

A notice or communication shall be treated as having been sent timely if it is dispatched in accordance with paragraph 1 prior to, or on the date of, the expiry of the time limit.

Article 9 Judicial or arbitral proceedings

1. During the Mini-trial, the parties undertake not to initiate or continue any judicial or arbitral proceedings relating to the same dispute or part of it, except as a conservatory measure.
2. Notwithstanding paragraph 1 hereinabove, the parties may present to the Court or to the Arbitral Tribunal a request for conservatory or provisional measures. Such a request shall not entail a waiver of the right to continue with the Mini-trial.

THE MINI-TRIAL COMMITTEE

Article 10 General provisions

1. Only those persons who are independent of the parties and of their counsel and who comply with the rules of good conduct set out in Schedule II, may serve as Chairman of the Mini-trial Committee in Mini-trials organized by CEPANI.
2. The Chairman of the Mini-trial Committee who was appointed shall sign a statement of independence and disclose in writing to the Secretariat any facts or circumstances which might be of

- such a nature to call into question the Chairman of the Mini-trial Committee's independence in the eyes of the parties. The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them.
3. The Chairman of the Mini-trial Committee shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature as those mentioned in paragraph 2 which may arise during the Mini-trial.
 4. The decisions of the Appointments Committee or the Chairman as to the appointment or replacement of the Chairman of the Mini-trial Committee shall be final. These decisions do not have to state the reasons for the decision.
 5. By accepting to serve, every Chairman of the Mini-trial Committee undertakes to carry out his responsibilities until the end in accordance with these Rules.
 6. Unless otherwise agreed by the parties, the Chairman of the Mini-trial Committee shall not act as an arbitrator, representative or counsel of a party in arbitral or judicial proceedings relating to the dispute which was the subject of a Mini-trial.

Article 11 The Mini-trial Committee

1. The Mini-trial Committee shall be composed of a Chairman of the Mini-trial Committee and two assessors appointed by and empowered to bind each party on the basis of a general or specific grant of authority.
2. Should more than two parties be involved in the mini-trial, then each party shall appoint one assessor to sit on the Mini-trial Committee, unless otherwise agreed.
3. The Appointments Committee or the Chairman appoints the Chairman of the Mini-trial Committee after the payment by the parties, or by one of them, of the advance on Mini-trial costs in accordance with the provisions of Article 20. It will thereby take into account more particularly the availability, the qualifications and the ability of the Chairman of the Mini-trial Committee to conduct the Mini-trial in accordance with these Rules.

Article 12 Replacement of the Chairman of the Mini-trial Committee

1. In the event of the Chairman of the Mini-trial Committee's death, accepted withdrawal, resignation, or if there is a cause preventing him from fulfilling his duties, or upon request of all parties, the Chairman of the Mini-trial Committee shall be replaced.
2. The Chairman of the Mini-trial Committee shall also be replaced when the Appointments Committee or the Chairman finds that the Chairman of the Mini-trial Committee is prevented *de jure* or

de facto from fulfilling his duties in accordance with these Rules or within the allotted time limits.

In such event, the Appointments Committee or the Chairman shall decide on the matter after having invited the Chairman of the Mini-trial Committee, the assessors and the parties to comment in writing to the Secretariat within the time limit allotted by the latter. Such comments shall be communicated to the parties and to the Mini-trial Committee.

THE MINI-TRIAL PROCEEDINGS

Article 13 Transmission of the file to the Mini-trial Committee

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

Article 14 Language of the Mini-trial

1. The language of the Mini-trial shall be determined by mutual agreement between the parties. Failing such an agreement, the language or languages of the Mini-trial shall be determined by the Chairman of the Mini-trial Committee, due regard being given to the circumstances of the case and, in particular, to the language of the contract.
2. The Chairman of the Mini-trial Committee, having consulted with his assessors, shall have full authority to decide which of the parties shall bear the translation costs, if any, and to what extent.

Article 15 Seat of the Mini-trial

1. The Appointments Committee or the Chairman shall determine the seat of the Mini-trial, unless the parties have agreed otherwise.
2. Unless otherwise agreed by the parties and after having consulted with them, the Mini-trial Committee may decide to hold its hearings and meetings at any other location that it considers appropriate.
3. The Mini-trial Committee may deliberate at any place that it considers appropriate.

Article 16 Examination of the case

1. The Chairman of the Mini-trial Committee, having consulted with his assessors, may ask the parties to provide additional information and exhibits.

2. After consultation with his assessors, the Chairman of the Mini-trial Committee shall determine the day, time and place of a meeting with the parties.
3. The Chairman of the Mini-trial Committee shall chair the meeting and offer the parties an opportunity to put forth their views.
4. The hearings shall not be public. Save with the approval of the Mini-trial Committee and the parties, persons not involved in the proceedings shall not be admitted.
5. The parties shall appear in person or through duly authorized representatives or counsel.
6. After the meeting, the Chairman of the Mini-trial Committee shall consult with his assessors and attempt to reach a consensus. In this respect, the Chairman of the Mini-trial Committee shall have the broadest powers to undertake whatever, in his opinion, may reasonably bring about a settlement. To this end, he may consult, *inter alia*, with each of his assessors separately.

SETTLEMENT AND END OF THE MINI-TRIAL

Article 17 Settlement

1. Should these consultations lead to a settlement, the agreement shall be set forth in writing and signed by the assessors in the name and on behalf of the parties. This document sets out the precise undertakings of each of the parties.
2. Subsequently, the Chairman of the Mini-trial Committee shall record in a set of minutes the fact that the parties have reached an agreement. The said minutes shall be signed by the Chairman of the Mini-trial Committee and the assessors, in the name and on behalf of the parties. A copy of the minutes is sent to the Secretariat
3. In the event that the consultations fail to bring about a settlement, the Chairman of the Mini-trial Committee shall record this fact in the minutes, which he shall sign and immediately notify to the Secretariat.

Article 18 End of the Mini-trial

1. When an agreement is reached, the Mini-trial shall end when the assessors, in the name and on behalf of the parties and the Chairman of the Mini-trial Committee, the minutes stating that an agreement has been reached.
2. If no agreement is reached, the Mini-trial shall end as soon as the Chairman of the Mini-trial Committee notifies to the Secretariat the minutes stating that no agreement has been reached.

3. Should one of the parties fail to appear in the proceedings after having been duly summoned, the Mini-trial shall end as soon as the Chairman of the Mini-trial Committee informs the Secretariat in writing of this fact.
4. At any time, either party may refuse to continue the Mini-trial. In such event, the Mini-trial ends when written notification of that party's refusal is sent to the Chairman of the Mini-trial Committee, if already constituted, and to the Secretariat.
5. The Chairman of the Mini-trial Committee may also decide, after consultation with his assessors, that there is no further justification for continuing with the Mini-trial. In such event, the Mini-trial ends as soon as the Chairman of the Mini-trial Committee informs the Secretariat in writing of this fact.

COSTS OF MINI-TRIAL

Article 19 Nature and amount of the Mini-trial costs

1. The Mini-trial costs shall include the fees and expenses of the Chairman of the Mini-trial Committee, as well as the administrative expenses of the Secretariat. They shall be fixed by the Secretariat on the basis of the amount of the principal claim and of the counterclaim, according to the Scale of Mini-trial costs in effect on the date on which the Secretariat has received the Request for Mini-trial and the annexes thereto.
2. The costs of the assessor nominated by a party shall be borne by this party. Other costs and expenses relating to the Mini-trial, such as the expenses incurred by a party, are not included in the Mini-trial costs and are borne by this party.
3. The Secretariat may fix the Mini-trial costs at a higher or lower figure than that which would result from the application of the Scale of Mini-trial Costs, should this be deemed necessary due to the exceptional circumstances of the case.
4. If the amount in dispute is not specified, totally or partially, the Secretariat, may determine, taking into account all available information, the amount in dispute on the basis of which the Mini-trial costs will be calculated.
5. The Secretariat may adjust the amount of the Mini-trial costs at any time during the proceedings if the circumstances of the case or if new claims reveal that the scope of the dispute is greater than originally considered.

Article 20 Advance on Mini-trial costs

1. The advance required to cover the Mini-trial costs as determined in accordance with Article 19, paragraph 1 shall be paid to

CEPANI prior to the appointment of the Chairman of the Mini-trial Committee by the Appointments Committee or the Chairman.

2. Further advance payments may be required if and when any adjustments are made to the Mini-trial costs in the course of the proceedings.
3. The advance on Mini-trial costs, as well as the additional advance on Mini-trial costs, shall be payable in equal shares by Claimant and Respondent. However, any party shall be free to pay the whole of the advance on Mini-trial costs should the other party fail to pay its share.
4. When the advance on Mini-trial costs exceeds € 50.000,00 a bank guarantee may be posted to cover such payment.
5. When a request for an additional advance on Mini-trial costs has not been complied with, and after consultation with the Mini-trial Committee, the Secretariat may direct the Mini-trial Committee to suspend its work and set a time limit, which must be not less than fifteen days, on the expiry of which the relevant claims or counterclaims on the basis of which the additional advance was calculated shall be considered as withdrawn. A party shall not be prevented on the ground of such a withdrawal from reintroducing the same claim or counterclaim at a later date in another proceeding.

Article 21 Decision on Mini-trial costs

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

SECTION IV MEDIATION

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Standard médiation clause

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

-- **English**

“The parties hereby undertake to apply the CEPANI Rules of Mediation to all disputes arising out of or in relation with this Agreement.”

The following provisions may be added to this clause:

“the seat of the mediation shall be (town or city)”

“the proceedings shall be conducted in the (...) language”

“should the mediation fail, the dispute shall be finally settled under the CEPANI Rules of Arbitration by one or more arbitrators appointed in accordance with those Rules.”

Français

“Les parties s’engagent à faire application, pour tous différends découlant du présent contrat ou en relation avec celui-ci, du règlement de médiation du CEPANI.”

Cette clause peut être complétée par les dispositions suivantes:

“le siège de la médiation sera (ville)”

“la langue de la procédure sera le (...)”

“en cas d’échec de la procédure de médiation, le différend sera définitivement tranché suivant le règlement d’arbitrage du CEPANI par un ou plusieurs arbitres nommés conformément à ce règlement.”

- **Dutch**

“De partijen verbinden zich ertoe voor alle geschillen die uit of met betrekking tot deze overeenkomst mochten ontstaan, het mediatiereglement van CEPINA toe te passen.”

Dit type beding kan worden aangevuld met de volgende bepalingen:

“de zetel van de mediatie is (stad)”

“de taal van de mediatie is (...)”

“indien de bemiddeling niet lukt, zal het geschil definitief beslecht worden volgens het arbitragereglement van CEPINA, door één of meer arbiters die conform dit reglement zijn benoemd.”

- **German**

“Die Parteien verpflichten sich dazu, bei allen aus oder in Zusammenhang mit dem gegenwärtigen Vertrag sich ergebenden Streitigkeiten die Mediationsverfahrensordnung des CEPANI anzuwenden.”

Diese Klausel kann noch durch die folgenden Bestimmungen ergänzt werden:

“der Sitz des Verfahrens ist (Stadt)”

“die Verfahrenssprache ist (...)”

“sollte die Mediation erfolglos bleiben, wird die Streitigkeit nach der Schiedsgerichtsordnung des CEPANI von einem oder mehreren gemäß dieser Ordnung ernannten Schiedsrichtern endgültig entschieden”

SECTION IV MEDIATION

PRELIMINARY PROVISIONS

Article 1 Scope

Section IV shall apply if one or more parties wish to settle their disputes through mediation according to the CEPANI rules. It is not required that the parties have agreed in advance on a mediation agreement.

Mediation means a process, whether referred to by the expression mediation, conciliation or any expression of similar import, whereby parties request a third person (the mediator) to assist them in their attempt to reach an amicable settlement of their dispute arising out of, or relating to, a contractual or other legal relationship. The mediator does not have the authority to impose upon the parties a solution to the dispute.

Article 2 Confidentiality

1. The mediator, the parties and their counsel, shall be bound by a duty of strict confidentiality.
2. Under no circumstances may any mention be made in arbitral or judicial proceedings of anything which has been done, said or written with a view to obtaining a settlement that eventually is not achieved.

COMMENCEMENT OF THE PROCEEDINGS

Article 3 Request for mediation

A party wishing to have recourse to mediation under the CEPANI rules shall submit its Request for Mediation to the Secretariat.

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

- a) name, first name and the name in full, description, address, telephone and fax numbers, e-mail addresses and VAT-number, if any, of each of the parties;
- b) a recital of the nature and circumstances of the dispute giving rise to the claim;
- c) a statement of the relief sought, a summary of the grounds for the claim, and, if possible, a financial estimate of the amount of the claim;
- d) any comments as to the seat of the mediation, the language of the mediation and the applicable rules of law.

Together with the Request, Claimant shall provide copies of all agreements, in particular the mediation agreement, the correspondence between the parties and other relevant documents.

The Request for mediation and the documents annexed thereto shall be supplied in a number of copies sufficient to provide one copy for each party, one copy for the mediator and one copy for the Secretariat.

Article 4 Answer to the Request for Mediation

1. As soon as possible the Secretariat shall inform Respondent of the Request for Mediation, and grants him a period of fifteen days to accept or reject the Request to take part in the attempt to mediate.
2. If no positive answer is given within that the said time limit, the Request for Mediation shall be considered void. The Secretariat shall immediately inform Claimant accordingly.

If Respondent accepts to take part in the mediation, the date on which he informs the Secretariat thereof shall be deemed to be the date of commencement of the mediation. The Secretariat shall confirm this date to the parties.

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

Article 5 Effect of the mediation agreement

When the parties agree to resort to CEPANI for mediation, they thereby submit to the Rules, including the annexes, in effect on the date on which the Secretariat received the Request for Mediation and the annexes thereto, unless they have agreed to submit to the Rules in effect on the date of their mediation agreement.

Article 6 Written notifications or communications and time limits

1. The Request for Mediation, the Answer to the Request for Mediation, all pleadings, the appointment of the mediator shall be valid if they are made by delivery against receipt, by registered mail, courier, fax or any other means of telecommunication that proves their dispatch. All other notifications and communications made pursuant to these Rules may be made by any other form of written communication.

If a party is represented by counsel, all notifications or communications shall be made to the latter, unless that party requests otherwise.

All notifications or communications shall be valid if dispatched to the last address of the party, as notified either by the party in question or by the other party.

2. A notification or communication, made in accordance with paragraph 1, shall be deemed to have been made when it is received or should have been received by the party itself, by its representative or its counsel.
3. Periods of time specified in the present Rules, shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with paragraph 1. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication has to be made, the period of time shall expire at the end of the first following business day.

A notice or communication shall be treated as having been sent timely if it is dispatched in accordance with paragraph 1 prior to, or on the date of, the expiry of the time limit.

THE MEDIATOR

Article 7 General provisions

1. Only those persons who are independent of the parties and of their counsel and who comply with the rules of good conduct set out in Schedule II, may serve as mediator in mediations organized by CEPANI.
2. The Appointments Committee or the Chairman shall appoint the mediator. The parties may nominate the mediator by mutual consent, subject to the approval of the Appointments Committee or the Chairman.
3. The mediator who was appointed or whose nomination has been approved, shall sign a statement of independence and disclose in writing to the Secretariat any facts or circumstances which might be of such a nature to call into question the mediator's independence in the eyes of the parties. The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them.
4. The mediator shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature as those mentioned in paragraph 3 which may arise during the mediation.
5. The decisions of the Appointments Committee or the Chairman as to the appointment or replacement of the mediator shall be final. These decisions do not have to state the reasons for the decision.
6. By accepting to serve, every mediator undertakes to carry out his responsibilities until the end in accordance with these Rules.
7. Unless otherwise agreed by the parties, the mediator shall not act

as an arbitrator, representative or counsel of a party in arbitral or judicial proceedings relating to the dispute which was the subject of mediation.

Article 8 Appointment of the mediator

The Appointments Committee or the Chairman appoints the mediator after the payment by the parties, or by one of them, of the advance on mediation costs in accordance with the provisions of Article 17. It will thereby take into account more particularly the availability, the qualifications and the ability of the mediator to conduct the mediation in accordance with these Rules.

Article 9 Replacement of the mediator

1. In the event of the mediator's death, accepted withdrawal, resignation, or if there is a cause preventing him from fulfilling his duties, or upon request of all parties, the mediator shall be replaced.
2. The mediator shall also be replaced when the Appointments Committee or the Chairman finds that the mediator is prevented de jure or de facto from fulfilling his duties in accordance with these Rules or within the allotted time limits.

In such event, the Appointments Committee or the Chairman shall decide on the matter after having invited the mediator and the parties to comment in writing to the Secretariat within the time limit allotted by the latter. Such comments shall be communicated to the parties and to the mediator.

THE MEDIATION

Article 10 Transmission of the file to the mediator

Provided that the advance on mediation costs has been fully paid, the Secretariat shall transmit the file to the mediator as soon as the latter has been appointed or his nomination approved.

Article 11 Language of the mediation

1. The language of the mediation shall be determined by mutual agreement between the parties. Failing such an agreement, the language or languages of the mediation shall be determined by the mediator, due regard being given to the circumstances of the case and, in particular, to the language of the contract.
2. The mediator shall have full authority to decide which of the parties shall bear the translation costs, if any, and to what extent.

Article 12 Seat of the mediation

1. The Appointments Committee or the Chairman shall determine the seat of the mediation, unless the parties have agreed otherwise.
2. Unless otherwise agreed by the parties and after having consulted with them, the mediator may decide to hold the hearings and meetings at any other location that he considers appropriate.

Article 13 Examination of the case

1. The mediator is free to organize the mediation as he sees fit.
2. As quickly as possible after its appointment the mediator shall set time limits for the parties to present their arguments.
3. After having received the arguments of the parties, the mediator shall examine the case and submit a mediation proposal to the parties.
4. The hearings shall not be public. Save with the approval of the mediator and the parties, persons not involved in the proceedings shall not be admitted.
5. The parties shall appear in person or through duly authorized representatives or counsel.

SETTLEMENT AND END OF THE MEDIATION

Article 14 Settlement

1. Should the mediation lead to a settlement, the agreement shall be set forth in writing and signed by the parties. This document sets out the precise undertakings of each of the parties.
2. Subsequently, the mediator shall record in a set of minutes the fact that the parties have reached an agreement. The said minutes shall be signed by the mediator and by the parties. A copy of the minutes shall be sent to the Secretariat.
2. In the event that the mediation fails to bring about a settlement, the mediator shall record this fact in the minutes, which he shall sign and immediately notify to the Secretariat.

Article 15 End of the mediation

1. When an agreement is reached, the mediation shall end when the parties and the mediator sign the minutes stating that an agreement has been reached.
2. If no agreement is reached, the mediation shall end as soon as the mediator notifies to the Secretariat the minutes stating that no agreement has been reached.
3. Should one of the parties fail to appear in the proceedings after

- having been duly summoned, the mediation shall end as soon as the mediator informs the Secretariat in writing of this fact.
4. At any time, either party may refuse to continue the mediation. In such event, the mediation ends when written notification of that party's refusal is sent to the mediator, if already appointed, and to the Secretariat.
 5. The mediator may also decide that there is no further justification for continuing with the mediation. In such event, the mediation ends as soon as the mediator informs the Secretariat in writing of this fact.

MEDIATION COSTS

Article 16 Nature and amount of the mediation costs

1. The mediation costs shall include the fees and expenses of the mediator, as well as the administrative expenses of the Secretariat. They shall be fixed by the Secretariat on the basis of the amount of the principal claim and of the counterclaim, according to the Scale of Mediation Costs in effect on the date on which the Secretariat has received the Request for Mediation and the annexes thereto.
2. Other costs and expenses relating to the mediation, such as the expenses incurred by a party, are not included in the mediation costs and are borne by this party.
3. The Secretariat may fix the mediation costs at a higher or lower figure than that which would result from the application of the Scale of Mediation Costs, should this be deemed necessary due to the exceptional circumstances of the case.
4. If the amount in dispute is not specified, totally or partially, the Secretariat, may determine, taking into account all available information, the amount in dispute on the basis of which the mediation costs will be calculated.
5. The Secretariat may adjust the amount of the mediation costs at any time during the proceedings if the circumstances of the case or if new claims reveal that the scope of the dispute is greater than originally considered.

Article 17 Advance on mediation costs

1. The advance required to cover the mediation costs, as determined in accordance with Article 16, paragraph 1, shall be paid to CEPANI prior to the appointment or the approval of the nomination of the mediator by the Appointments Committee or the Chairman.
2. Further advance payments may be required if and when any

- adjustments are made to the mediation costs in the course of the proceedings.
3. The advance on mediation costs, as well as the additional advance on mediation costs, shall be payable in equal shares by Claimant and Respondent. However, any party shall be free to pay the whole of the advance on mediation costs should the other party fail to pay its share.
 4. When the advance on mediation costs exceeds € 50.000,00 a bank guarantee may be posted to cover such payment.
 5. When a request for an additional advance on mediation costs has not been complied with, and after consultation with the mediator, the Secretariat may direct the mediator to suspend his work and set a time limit, which must be not less than fifteen days, on the expiry of which the relevant claims or counterclaims on the basis of which the additional advance was calculated shall be considered as withdrawn. A party shall not be prevented on the ground of such a withdrawal from reintroducing the same claim or counterclaim at a later date in another proceeding.

Article 18 Decision on mediation costs

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

SECTION V
TECHNICAL EXPERTISE

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Standard clause for technical expertise

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

- **English**

“The parties hereby undertake to apply the CEPANI rules of technical expertise for all disputes arising out of or in relation with this agreement.”

The following provisions may be added to this clause¹:

“the seat of the technical expertise shall be (town or city) ”

“the proceedings shall be conducted in the (...) language”

“the technical expertise shall be carried out by (one) or (three) experts”

“the findings and conclusions of the expert(s) shall (not) be binding on the parties”

- **French**

“Les parties s’engagent à faire application, pour tous différends découlant du présent contrat ou en relation avec celui-ci, du règlement d’expertise technique du CEPANI.”

Cette clause peut être complétée par les dispositions suivantes²:

“le siège de l’expertise sera (ville)”

“la langue de la procédure sera le (...)”

“l’expertise sera effectuée par (un) ou (trois) experts”

“les constatations et conclusions de(s) l’expert(s) (ne) lient (pas) les parties”

- **Dutch**

“De partijen verbinden zich ertoe voor alle geschillen die uit of met betrekking tot deze overeenkomst mochten ontstaan, een deskundigenonderzoek volgens het reglement van CEPINA te laten plaats vinden.”

Dit type beding kan worden aangevuld met de volgende bepalingen³:

“de zetel van het deskundigenonderzoek is (stad)”

“de taal van het deskundigenonderzoek is (...)”

“het deskundigenonderzoek zal uitgevoerd worden door (een) of (drie) deskundigen”

“de vaststellingen en besluiten van de deskundige(n) binden de partijen (niet) ”

- **Allemand**

“Die Parteien verpflichten sich dazu, bei allen aus oder in Zusammenhang mit dem gegenwärtigen Vertrag sich ergebenden Streitigkeiten die Technische Begutachtungsverfahrensordnung des CEPANI anzuwenden.”

Diese Klausel kann noch durch die folgenden Bestimmungen ergänzt werden ⁴:

“der Sitz des Verfahrens ist (Stadt)”

“die Verfahrenssprache ist (...)”

“die Begutachtung wird von (einem) oder (drei) Sachverständigen durchgeführt”

“die Feststellungen und Beschlüsse des (der) Sachverständigen sind für die Parteien (un)verbindlich”

⁽¹⁾ Delete as appropriate.

⁽²⁾ Biffer la mention inutile.

⁽³⁾ Schrappen wat niet past.

⁽⁴⁾ Nichtzutreffendes streichen.

SECTION V TECHNICAL EXPERTISE

COMMENCEMENT OF THE PROCEEDINGS

Article 1 Request for Technical Expertise

1. A party wishing to have recourse to technical expertise under the CEPANI rules shall submit its Request for Technical Expertise to the Secretariat.

The Request for Technical Expertise shall include, *inter alia*, the following information:

- a) name, first name and the name in full, description, address, telephone and fax numbers, e-mail addresses and VAT-number, if any, of each of the parties;
- b) a recital of the nature and circumstances of the dispute giving rise to the claim;
- c) the purpose and the nature of the technical expertise;
- d) any comments as to the seat of the technical expertise and the language of the technical expertise.

Together with the Request, Claimant shall provide copies of all agreements, in particular the technical expertise agreement and other relevant documents.

The Request for Technical Expertise and the documents annexed thereto shall be supplied in a number of copies sufficient to provide one copy for each expert and one for the Secretariat.

2. Claimant shall also attach to the Request for Technical Expertise proof of the dispatch to Respondent of the Request and the documents annexed thereto.
3. The date on which the Secretariat receives the Request for Technical Expertise and the annexes thereto shall be deemed to be the date of commencement of the technical expertise. The Secretariat shall confirm this date to the parties.

Article 2 Answer to the Request for Technical Expertise

1. Within fifteen days from the date on which the Secretariat has received the Request for Technical Expertise and the annexes thereto, Respondent shall send its Answer to the Request for Technical Expertise to the Secretariat.

The Answer shall include, *inter alia*, the following information:

- a) name, first name and the name in full, description, address, telephone and fax numbers, e-mail address and VAT-number, if any, of Respondent;

- b) its comments on the nature and circumstances of the dispute that gives rise to the claim;
- c) its response to the expert's mission as defined by Claimant;
- d) any comments as to the seat of the technical expertise and the language of the technical expertise.

The Answer and the documents annexed thereto shall be supplied in a number of copies sufficient to provide one copy for each expert and one for the Secretariat.

2. Respondent shall also attach to the Answer proof of the dispatch, within the same time limit of fifteen days, to Claimant of the Answer and the documents annexed thereto.
3. This time limit may be extended pursuant to a reasoned request of Respondent, or on its own motion, by the Secretariat.

Article 3 Lack of an apparent technical expertise agreement

In the event that there is no apparent technical expertise agreement, the technical expertise may not proceed should Respondent not answer within the period of fifteen days mentioned in Article 2, or should Respondent refuse technical expertise in accordance with the CEPANI Rules.

Article 4 Effect of the technical expertise agreement

1. When the parties agree to resort to CEPANI for technical expertise, they thereby submit to the Rules, including the annexes, in effect on the date on which the Secretariat received the Request for Technical Expertise and the annexes thereto, unless they have agreed to submit to the Rules in effect on the date of their technical expertise agreement.
2. If, notwithstanding an apparent technical expertise agreement, one of the parties refuses to submit to technical expertise, or fails to take part in the technical expertise, the technical expertise shall nevertheless proceed.

Article 5 Written notifications or communications and time limits

1. The Request for Technical Expertise, the Answer to the Request for Technical Expertise, all pleadings, the appointment of the experts and the notification of the technical report shall be valid if they are made by delivery against receipt, by registered mail, courier, fax or any other means of telecommunication that proves their dispatch. All other notifications and communications made pursuant to these Rules may be made by any other form of written communication.

If a party is represented by counsel, all notifications or communications shall be made to the latter, unless that party requests otherwise.

All notifications or communications shall be valid if dispatched to the last address of the party, as notified either by the party in question or by the other party.

2. A notification or communication, made in accordance with paragraph 1, shall be deemed to have been made when it was received or should have been received by the party itself, by its representative or its counsel.
3. Periods of time specified in the present Rules, shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with paragraph 2. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication has to be made, the period of time shall expire at the end of the first following business day.

A notice or communication shall be treated as having been sent timely if it is dispatched in accordance with paragraph 1 prior to, or on the date of, the expiry of the time limit.

THE EXPERT(S)

Article 6 General provisions

1. Only those persons who are independent of the parties and of their counsel and who comply with the rules of good conduct set out in Schedule II, may serve as experts in technical expertise proceedings organized by CEPANI.
2. The Appointments Committee or the Chairman shall appoint the expert(s). The parties may nominate the expert(s) by mutual consent, subject to the Appointments Committee or the Chairman.
3. The expert who was appointed or whose nomination has been approved, shall sign a statement of independence and disclose in writing to the Secretariat any facts or circumstances which might be of such a nature so as to call into question the expert's independence in the eyes of the parties. The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them.
4. An expert shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature as those mentioned in paragraph 3 which may arise during the technical expertise.
5. The decisions of the Appointments Committee or the Chairman

as to the appointment, approval or replacement of an expert shall be final. These decisions do not have to state the reasons for the decision.

6. By accepting to serve, every expert undertakes to carry out his responsibilities until the end in accordance with these Rules.

Article 7 Appointment of the expert

1. The Appointments Committee or the Chairman shall appoint, or approve the nomination of, the expert(s), as agreed by the parties or, in the absence of such an agreement, by taking into account the importance and the complexity of the case in question.
2. The parties shall define the expert's mission. Failing this, or if the wording of the mission is likely to create difficulties, the Appointments Committee or the Chairman shall define the expert's mission after having summoned and heard the parties beforehand.
3. The Appointments Committee or the Chairman appoints or approves the nomination of the expert(s) after the payment by the parties, or by one of them, of the advance on technical expertise costs in accordance with the provisions of Article 16. It thereby takes into account more particularly the availability, the qualifications and the ability of the expert(s) to conduct the technical expertise in accordance with these Rules.

Article 8 Replacement of the expert

1. In the event of an expert's death, accepted withdrawal, resignation, or if there is a cause preventing him from fulfilling his duties, or upon request of all parties, the expert shall be replaced.
2. An expert shall also be replaced when the Appointments Committee or the Chairman finds that the expert is prevented de jure or de facto from fulfilling his duties in accordance with these Rules or within the allotted time limits.

In such event, the Appointments Committee or the Chairman shall decide on the matter after having invited the expert concerned, the other experts, if any, and the parties to comment in writing to the Secretariat within the time limit allotted by the latter. Such comments shall be communicated to the parties and to the expert(s).

THE TECHNICAL EXPERTISE

Article 9 Transmission of the file to the expert

Provided that the advance on technical expertise costs has been fully paid, the Secretariat shall transmit the file to the expert(s) as soon as the latter has been appointed or his nomination approved.

Article 10 Language of the technical expertise

1. The language of the technical expertise shall be determined by mutual agreement between the parties. Failing such an agreement, the language or languages of the technical expertise shall be determined by the expert(s), due regard being given to the circumstances of the case and, in particular, to the language of the contract.
2. The expert(s) shall have full authority to decide which of the parties shall bear the translation costs, if any, and to what extent.

Article 11 Seat of the technical expertise

1. The Appointments Committee or the Chairman shall determine the seat of the technical expertise, unless the parties have agreed otherwise.
2. Unless otherwise agreed by the parties and after having consulted with them, the expert(s) may decide to hold his(their) hearings and meetings at any other location that he(they) consider(s) appropriate.

Article 12 Examination of the case

1. After having duly heard the parties, the expert(s) shall proceed with his(their) appraisal in accordance with his(their) mission.
2. The parties shall appear in person or through duly authorized representatives or counsel.
3. The parties shall assist the expert(s) in every way in carrying out his(their) mission, namely by providing him(them) with the necessary documents and giving access to the sites where he(they) may require verifications and investigations to be carried out.
4. Unless otherwise agreed, the findings and conclusions of the expert(s) shall be binding on the parties in the same manner as the terms of their contract.
5. The hearings shall not be public. Save with the approval of the expert(s) and the parties, persons not involved in the proceedings shall not be admitted.

THE TECHNICAL REPORT

Article 13 The technical report

The mission of the expert(s) shall end when he(they) render(s) his(their) final technical report describing his(their) findings and conclusions.

Article 14 Notification of the technical report

1. Once the technical report has been drawn up, the expert(s) shall transmit it to the Secretariat in as many original versions as there are parties involved, plus one original version for the Secretariat
2. The Secretariat shall notify the original signed technical report to the parties, provided that the technical expertise costs have been fully paid to the CEPANI by the parties or by one of them

TECHNICAL EXPERTISE COSTS

Article 15 Nature and amount of the technical expertise costs

1. The technical expertise costs shall include the fees and expenses of the expert(s), as well as the administrative expenses of the Secretariat. They shall be fixed by the Secretariat in consultation with the appointed expert(s) and due regard being given to the nature and scope of his(their) mission.
2. Other costs and expenses relating to the technical expertise, such as the expenses incurred by a party, are not included in the technical expertise costs and are borne by this party.
3. The Secretariat may adjust the amount of the technical expertise costs at any time during the proceedings if the circumstances of the case or if new missions reveal that the scope of the case is greater than originally considered.

Article 16 Advance on technical expertise costs

1. The advance required to cover the technical expertise costs, as determined in accordance with Article 15, paragraph 1 shall be paid to CEPANI prior to the appointment or the approval of the nomination of the expert(s) by the Appointments Committee or the Chairman.
2. Further advance payments may be required if and when any adjustments are made to the technical expertise costs in the course of the proceedings.
3. The advance on technical expertise costs, as well as the additional advance on technical expertise costs, shall be payable in

- equal shares by Claimant and Respondent. However, any party shall be free to pay the whole of the advance on technical expertise costs should the other party fail to pay its share.
4. When a request for an additional advance on technical expertise costs has not been complied with, and after consultation with the expert(s), the Secretariat may direct the expert(s) to suspend his(their) work and set a time limit, which must be not less than fifteen days, on the expiry of which the extension of the mission on the basis of which the additional advance was calculated shall be considered as withdrawn. A party shall not be prevented on the ground of such a withdrawal from reintroducing the same claim or counterclaim at a later date in another proceeding.

Article 17 Decisions on technical expertise costs

1. The technical expertise costs shall be finally fixed by the Secretariat.
2. Unless otherwise agreed, the parties shall each bear one half of the costs of the technical expertise.
3. The technical report shall mention the technical expertise costs, as determined by the Secretariat, and set out the agreement between the parties, if any, on the allocation of the technical expertise costs.

**SECTION VI
ADAPTATION
OF CONTRACTS**

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Standard adaptation of contracts clause

The parties who wish to refer to the CEPANI Rules of Adaptation of Contracts are advised to insert the following clause in their contracts:

- **English**

“The parties hereby undertake to apply the CEPANI Rules of Adaptation of Contracts should either one of them so request.

The opinion of the third person appointed in accordance with these Rules shall have the authority of a (recommendation) or (decision).”¹

The following provisions may be added to this clause :

“The seat of the proceedings shall be (town or city)”

“The proceedings shall be conducted in the (...) language”

“The adaptation of contracts proceedings shall be followed by arbitration proceedings under the Rules of CEPANI if so requested by one of the parties”

- **French**

“Les parties s’engagent à faire application, à la demande de l’une d’elles, du règlement d’adaptation des contrats du CEPANI.

L’avis du tiers désigné conformément à ce règlement a valeur de (recommandation) ou de (décision).”²

Cette clause peut être complétée par les dispositions suivantes :

“Le siège de la procédure sera (ville)”

“La langue de la procédure sera le (...)”

“La procédure d’adaptation des contrats sera suivie, à la demande d’une des parties, d’une procédure d’arbitrage conformément au règlement du CEPANI”

- **Dutch**

“De partijen verbinden zich er toe om op verzoek van één van hen toepassing te maken van het reglement van CEPINA betreffende de aanpassing van de overeenkomsten.

Het advies van de conform dit reglement aangestelde derde geldt als (aanbeveling) of als (beslissing).”³

Dit type beding kan worden aangevuld met de volgende bepalingen :

“De zetel van het verloop van de procedure is (stad)”

“De taal van de procedure is (...)”

“De procedure tot aanpassing van de overeenkomst zal op verzoek van een der partijen gevolgd worden door een arbitrageprocedure volgens het arbitragereglement van CEPINA”

- **German**

“Die Parteien vereinbaren dass, auf Antrag von einer unter ihnen, die CEPANI Regeln über die Vertragsanpassung anzuwenden sind.

Der nach diesen Regeln ernannte Dritte soll (eine Empfehlung aussprechen) oder (eine für die Parteien bindende Entscheidung treffen).”⁴

Diese Klausel kann noch durch die folgenden Bestimmungen ergänzt werden :

“Der Sitz des Verfahrens ist (Stadt)”

“Die Verfahrenssprache ist (...)”

“Auf Antrag von einer der Parteien, wird in Anschluss an das Verfahren über die Vertragsanpassung ein Schiedsverfahren gemäß der Schiedsgerichtsordnung des CEPANI durchgeführt.”

⁽¹⁾ Delete as appropriate.

⁽²⁾ Biffer la mention inutile.

⁽³⁾ Schrappen wat niet past.

⁽⁴⁾ Nichtzutreffendes streichen.

SECTION VI ADAPTATION OF CONTRACTS

PRELIMINARY PROVISIONS

Article 1 Scope

1. Section VI shall apply if one or more parties wish to have recourse to a third person whose mission shall be to complete the contract on items unforeseen by them, or to adapt their common intent to new situations.
2. Only parties who have so agreed with a specific clause may have recourse to Section VI. Depending on its scope as determined by the parties, the mission shall lead to a recommendation or a decision.

COMMENCEMENT OF THE PROCEEDINGS

Article 2 Request for Adaptation of Contracts

1. A party wishing to have recourse to the adaptation of contracts proceedings under the CEPANI rules shall submit its Request for Adaptation of Contracts to the Secretariat.

The Request for Adaptation of Contracts shall include, inter alia, the following information:

- a) name, first name and the name in full, description, address, telephone and fax numbers, e-mail addresses and VAT-number, if any, of each of the parties;
- b) Claimant's position;
- c) any comments as to the seat and the language of the adaptation of contracts proceedings and the applicable rules of law.

Together with the Request, Claimant shall provide copies of all agreements, in particular the agreement for the adaptation of contracts, the correspondence between the parties and other relevant documents.

The Request for Adaptation of Contracts and the documents annexed thereto shall be supplied in a number of copies sufficient to provide one copy for the third person and one for the Secretariat.

Article 3 Answer to the Request for Adaptation of Contracts

1. If the Request is submitted by one party only, the Secretariat shall inform the other party of the Request for Adaptation of Contracts as soon as possible and grant it a period of fifteen days to submit its comments with respect to the Request.

2. If the Request is submitted by one party only, the date on which the Secretariat informs the other party of the Request for Adaptation of Contracts and of the annexes thereto shall be deemed to be the date of commencement of the adaptation of contracts proceedings.

If the Request is submitted by all the parties, the date on which the Secretariat receives the Request for Adaptation of Contracts and the annexes thereto shall be deemed to be the date of commencement of the adaptation of contract proceedings.

The Secretariat shall confirm the date of commencement of the adaptation of contracts proceedings to the parties.

3. The time limit mentioned in paragraph 1 may be extended pursuant to a reasoned request of Respondent, or on its own motion, by the Secretariat.

Article 4 Lack of an apparent adaptation of contracts agreement

In the event that there is no apparent adaptation of contracts agreement, the adaptation of contracts proceedings may not proceed should the absent party not answer within the period of fifteen days mentioned in Article 3, or should it refuse the adaptation of contracts proceedings in accordance with the CEPANI Rules.

Article 5 Effect of the adaptation of contracts agreement

When the parties agree to resort to CEPANI for the adaptation of contracts proceedings, they thereby submit to the CEPANI Rules, including the annexes, in effect on the date on which Secretariat received the Request for Adaptation of Contracts and the annexes thereto, unless they have agreed to submit to the Rules in effect on the date of their adaptation of contracts agreement.

Article 6 Written notifications or communications and time limits

1. The Request for Adaptation of Contracts, the Answer to the Request for Adaptation of Contracts, all pleadings, the appointment of the third person and the notification of the decision or the recommendation of the third person shall be valid if they are made by delivery against receipt, by registered mail, courier, fax or any other means of telecommunication that proves their dispatch. All other notifications and communications made pursuant to these Rules may be made by any other form of written communication.

If a party is represented by counsel, all notifications or communications shall be made to the latter, unless that party requests otherwise.

All notifications or communications shall be valid if dispatched to

the last address of the party, as notified either by the party in question or by the other party.

2. A notification or communication, made in accordance with paragraph 1, shall be deemed to have been made when it was received or should have been received by the party itself, by its representative or its counsel.
3. Periods of time specified in the present Rules, shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with paragraph 2. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication has to be made, the period of time shall expire at the end of the first following business day.

A notice or communication shall be treated as having been sent timely if it is dispatched in accordance with paragraph 1 prior to, or on the date of, the expiry of the time limit.

THE THIRD PERSON

Article 7 General provisions

1. Only those persons who are independent of the parties and of their counsel and who comply with the rules of good conduct set out in Schedule II, may serve as third persons in adaptation of contracts proceedings organized by CEPANI.
2. The Appointments Committee or the Chairman shall appoint the third person. The parties may nominate the third person by mutual consent, subject to the approval of the Appointments Committee or the Chairman.
3. The third person who was appointed or whose nomination has been approved, shall sign a statement of independence and disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to call into question the third person's independence in the eyes of the parties. The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them.
4. The third person shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature as those mentioned in paragraph 3 which may arise during the adaptation of contracts proceedings.
5. The decisions of the Appointments Committee or the Chairman as to the appointment, approval of the nomination or replacement of the third person shall be final. These decisions do not have to state the reasons for the decision.
6. By accepting to serve, every third person undertakes to carry out his responsibilities until the end in accordance with these Rules.

7. Unless otherwise agreed by the parties, the third person shall not act as an arbitrator, representative or counsel of a party in arbitral or judicial proceedings relating to the dispute which was the subject of the adaptation of contracts proceedings.

Article 8 Appointment of the third person

1. The parties may nominate the third person by mutual consent, subject to the approval of the Appointments Committee or the Chairman. Should the parties fail to agree on his nomination within fifteen days from the notification of the Request for Adaptation of Contracts to the other party, or within such additional time as may be allowed by the Secretariat, the third person shall be automatically appointed by the Appointments Committee or the Chairman. Where the Appointments Committee or the Chairman refuses to approve the nomination of the third person, it or he shall proceed with the replacement within a period of fifteen days of the notification of this refusal to the parties.
2. The Appointments Committee or the Chairman appoints or approves the nomination of the third person after the payment by the parties, or by one of them, of the advance on Adaptation of Contracts costs in accordance with the provisions of Article 17. It thereby takes into account more particularly the availability, the qualifications and the ability of the third person to conduct the adaptation of contracts proceedings in accordance with these Rules.

Article 9 Replacement of the third person

1. In the event of a third person's death, accepted withdrawal, resignation, or if there is a cause preventing him from fulfilling his duties, or upon request of all parties, the third person shall be replaced.
2. A third person shall also be replaced when the Appointments Committee or the Chairman finds that the third person is prevented de jure or de facto from fulfilling his duties in accordance with these Rules or within the allotted time limits.

In such event, the Appointments Committee or the Chairman shall decide on the matter after having invited the third person and the parties to comment in writing to the Secretariat within the time limit allotted by the latter. Such comments shall be communicated to the parties and to the third person.

THE ADAPTATION OF CONTRACTS PROCEEDINGS

Article 10 Transmission of the file to the third person

Provided that the advance on adaptation of contracts costs has been fully paid, the Secretariat shall transmit the file to the third person as soon as the latter has been appointed or his nomination approved.

Article 11 Language of the adaptation of contracts proceedings

1. The language of the adaptation of contracts proceedings shall be determined by mutual agreement between the parties. Failing such an agreement, the language or languages of the adaptation of contracts proceedings shall be determined by the third person, due regard being given to the circumstances of the case and, in particular, to the language of the contract.
2. The third person shall have full authority to decide which of the parties shall bear the translation costs, if any, and to what extent.

Article 12 Seat of the adaptation of contracts proceedings

1. The Appointments Committee or the Chairman shall determine the seat of the adaptation of contracts proceedings, unless the parties have agreed otherwise.
2. Unless otherwise agreed by the parties and after having consulted with them, the third person may decide to hold his hearings and meetings at any other location that he considers appropriate.

Article 13 Examination of the case

The third person is free to organize the proceedings as he sees fit.

DECISION OR RECOMMENDATION AND END OF THE ADAPTATION OF CONTRACTS PROCEEDINGS

Article 14 Decision or recommendation of the third Person

The mission of the third person shall end when he draws up his conclusions in a written decision or recommendation.

Article 15 Notification of the decision or recommendation

1. Once the decision or recommendation has been made, the third person shall transmit it to the Secretariat in as many original ver-

- sions as there are parties involved, plus one original version for the Secretariat
2. The Secretariat shall notify the original signed decision or recommendation to the parties, provided that the adaptations of contracts costs have been fully paid to the CEPANI by the parties or by one of them.

ADAPTATION OF CONTRACTS COSTS

Article 16 Nature and amount of the costs of the Adaptation of Contracts proceedings

1. The costs of the adaptation of contracts proceedings shall include the fees and expenses of the third person, as well as the administrative expenses of CEPANI. They shall be fixed by the Secretariat in consultation with the appointed third person and due regard being given to the nature and scope of his mission.
2. Other costs and expenses relating to the adaptation of contracts proceedings, such as the expenses incurred by a party, are not included in the adaptation of contracts proceedings and are borne by this party.

Article 17 Advance on the costs of the Adaptation of Contracts proceedings

1. The advance required to cover the costs of the adaptation of contracts proceedings, as determined in accordance with Article 16, paragraph 1 shall be paid to the CEPANI prior to the appointment or the approval of the nomination of the third person by the Appointments Committee or the Chairman.
2. Further advance payments may be required if and when any adjustments are made to the costs of the adaptation of contracts proceedings in the course of the proceedings.
3. The advance on adaptation of contracts costs, as well as the additional advance on adaptation of contracts costs, shall be payable in equal shares by Claimant and Respondent. However, any party shall be free to pay the whole of the advance on adaptation of contracts costs should the other party fail to pay its share.
4. When the advance on adaptation of contracts costs exceeds € 50.000,00 a bank guarantee may be posted to cover such payment.
5. When a request for an additional advance on adaptation of contracts costs has not been complied with, and after consultation with the third person, the Secretariat may direct the third person to suspend his work and set a time limit, which must be not less than fifteen days, on the expiry of which the extension of the

mission on the basis of which the additional advance was calculated shall be considered as withdrawn. A party shall not be prevented on the ground of such a withdrawal from reintroducing the same claim or counterclaim at a later date in another proceeding.

Article 18 Decision on the Adaptation of Contracts costs

1. The adaptation of contracts costs shall be finally fixed by the Secretariat.
2. Unless otherwise agreed, the parties shall each bear one half of the costs of the adaptation of contracts proceedings.
3. The decision or the recommendation of the third person set forth the adaptation of contracts costs, as determined by the Secretariat, and set out the agreement between the parties, if any, on the allocation of the adaptation of contracts costs.

SCHEDULES

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SCHEDULES I

COST OF SCALE

I. COST OF ARBITRATION SCALE

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

1.1. The fees and costs of the arbitrators shall be determined by the Secretariat in accordance with the amount in dispute and within the limits mentioned hereinafter:

Sum in dispute (in euro €)		Fees		Maximum
		Minimum		
from	0,00 to 12.500,00	625,00		1.250,00
from	12.501,00 to 50.000,00	1.250,00 +	1,00% otae 12.500	1.250,00 + 5,00% otae 12.500
from	50.001,00 to 100.000,00	1.500,00 +	3,00% otae 50.000	3.000,00 + 4,00% otae 50.000
from	100.001,00 to 500.000,00	3.000,00 +	1,50% otae 100.000	6.000,00 + 1,50% otae 100.000
from	500.001,00 to 1.000.000,00	10.000,00 +	0,75% otae 500.000	12.500,00 + 1,50% otae 500.000
from	1.000.001,00 to 5.000.000,00	17.000,00 +	0,70% otae 1.000.000	20.000,00 + 0,75% otae 1.000.000
from	5.000.001,00 to 10.000.000,00	45.000,00 +	0,30% otae 5.000.000	60.000,00 + 0,30% otae 5.000.000
from	10.000.001,00 to 50.000.000,00	70.000,00 +	0,025% otae 10.000.000	80.000,00 + 0,025% otae 10.000.000
	over 50.000.000,00	90.000,00 +	0,012% otae 50.000.000	140.000,00 + 0,012% otae 50.000.000

otae = of the amount exceeding

1.2. The administrative costs of CEPANI are fixed at 10% of the fees and costs of the arbitrators, as mentioned above. They are subject to VAT.

2. When the arbitrator is subject to VAT, he shall so inform the Secretariat, which will charge the parties with the VAT owed on the arbitrator's fees.

3. When a tribunal of three arbitrators has been appointed, the above rates of costs and fees shall be multiplied with 2,5.

When the arbitral tribunal is composed of more than three arbitrators, the Secretariat of CEPANI shall determine the arbitration costs accordingly.

4. Prior to any technical expertise ordered by the Arbitral Tribunal, the parties or one of them shall pay an advance, the amount of which shall be determined by the arbitral tribunal and cover the

probable costs and fees of the expert(s). The fees and final costs of the expert shall be determined by the Arbitral Tribunal.

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

II. COST OF MINI-TRIAL AND MEDIATION SCALE

1. The mini-trial costs shall include the fees and expenses of the chairman of the mini-trial committee, as well as the administrative expenses of the Secretariat.

The mediation costs shall include the fees and expenses of the mediator, as well as the administrative expenses of the Secretariat.

1.1. The fees and costs of the chairman of the mini-trial committee and the mediator shall be determined by the Secretariat in accordance with the amount in dispute and within the limits mentioned hereinafter:

Sum in dispute (in euro €)		Fees		Maximum
		Minimum		
de	0,00 à 12.500,00	312,50	625,00	
from	12.501,00 to 50.000,00	625,00 +	0,50% otae 12.500	625,00 + 2,50% otae 12.500
from	50.001,00 to 100.000,00	750,00 +	1,50% otae 50.000	1.500,00 + 2,00% otae 50.000
from	100.001,00 to 500.000,00	1.500,00 +	0,75% otae 100.000	3.000,00 + 0,75% otae 100.000
from	500.001,00 to 1.000.000,00	5.000,00 +	0,375% otae 500.000	6.250,00 + 0,75% otae 500.000
from	1.000.001,00 to 5.000.000,00	8.500,00 +	0,35% otae 1.000.000	10.000,00 + 0,375% otae 1.000.000
from	5.000.001,00 to 10.000.000,00	22.500,00 +	0,15% otae 5.000.000	30.000,00 + 0,15% otae 5.000.000
from	10.000.001,00 to 50.000.000,00	35.000,00 +	0,0125% otae 10.000.000	40.000,00 + 0,0125% otae 10.000.000
bovenover	50.000.000,00	45.000,00 +	0,006% otae 50.000.000	70.000,00 + 0,006% otae 50.000.000

otae = of the amount exceeding

- 1.2. The administrative expenses of CEPANI are fixed at 10% of the fees and costs of the chairman of the mini-trial committee or the mediator, as mentioned above. They are subjected to VAT.
- When the chairman of the mini-trial committee or the mediator is subject to VAT, he shall so inform the Secretariat, which will charge the parties with the VAT owed on their fees.
 - Whenever the circumstances of the case so require, the aforementioned minimum and maximum amounts may be increased, after having heard the mini-trial committee or the mediator and the parties, as the case may be.
 - The mini-trial committee and the mediator shall only deal with those claims for which the advance has been paid.

SCHEDULE II

RULES OF GOOD CONDUCT FOR PROCEEDINGS ORGANIZED BY CEPANI

1. The Chairman and Secretary-General of CEPANI, their associates and employees, shall not participate in any proceedings conducted under the CEPANI rules, either as an arbitrator, chairman of the mini-trial committee, mediator, expert, third person appointed to adapt contracts, or counsel.
2. In accepting his appointment by CEPANI, the arbitrator, chairman of the mini-trial committee, mediator, expert or third person appointed to adapt contracts shall agree to apply strictly the CEPANI rules and to collaborate loyally with the Secretariat. He shall regularly inform the Secretariat of his work in progress.
3. The prospective arbitrator, chairman of the mini-trial committee, mediator, expert or third person shall accept his appointment only if he is independent of the parties and of their counsel. If any event should subsequently occur that is likely to call into question this independence in his own mind or in the minds of the parties, he shall immediately inform the Secretariat which will then inform the parties. After having considered the parties' comments, the Appointments Committee or the Chairman of CEPANI shall decide on his possible replacement. It or he shall make the decision alone and shall not disclose the reasons.
4. An arbitrator appointed upon the proposal of one of the parties shall neither represent nor act as that party's agent.
5. Once nominated by CEPANI, the arbitrator appointed upon the proposal of a party undertakes to have no further relation with that party, nor with its counsel, in the course of the arbitration. Any contact with this party shall take place through the chairman of the arbitral tribunal or with his explicit permission.
6. In the course of the arbitration proceedings, the arbitrator, chairman of the mini-trial committee, mediator, expert or third person appointed to adapt contracts shall, in all circumstances, show the utmost impartiality, and shall refrain from any deeds or words that might be perceived by a party as bias, especially when asking questions at the hearings.
7. If the circumstances so permit, the arbitrator may, with due regard to paragraph 6 here above, ask the parties to seek an amicable settlement and, with the explicit permission of the Secretariat and of the parties, to suspend the proceedings for whatever period of time is necessary.
8. By accepting his appointment by CEPANI, the arbitrator undertakes to ensure that the Award is rendered as diligently as pos-

sible. This means, namely, that he shall request an extension of the time limit, provided by the CEPANI Rules, only if necessary or with the explicit agreement of the parties.

9. The arbitrator, chairman of the mini-trial committee, mediator, expert or third person shall obey the rules of strict confidentiality in each case attributed to him by the Secretariat.
10. Awards may only be published anonymously and with the explicit approval of the parties. The Secretariat shall be informed thereof beforehand. This rule applies to the arbitrators as well as to the parties and their counsel.
11. The signature of the Award by a member of an Arbitral Tribunal of three arbitrators does not imply necessarily that that arbitrator agrees with the content of the award.

SCHEDULE III

PROVISIONS OF THE BELGIAN JUDICIAL CODE RELATING TO ARBITRATION

CHAPTER 6 - ARBITRATION

Article 1676 – 1° Any dispute already existing or that may arise from a given legal situation, and which can be the object of a settlement, may by agreement be submitted to arbitration.

2° Anyone who has the legal capacity or the right to settle can agree to arbitration.

Without prejudice to specific laws, public legal entities can however only conclude an arbitration agreement if the object thereof is to resolve disputes relating to the conclusion or the performance of an agreement. The conditions that apply to the conclusion of the contract, the performance of which constitutes the object of the arbitration, also apply to the conclusion of the arbitration agreement. Moreover, public legal entities may conclude arbitration agreements on all matters defined by law or by royal decree decided by the Council of Ministers. The decree may also set forth the conditions and rules to which the completion of such an agreement is subject.

3° The above mentioned stipulations shall apply without prejudice to the exceptions provided by law.

Article 1677 - An arbitration agreement shall be agreed by the parties in writing, or by other documents that are binding on the parties and that reveal their intent to resort to arbitration.

Article 1678 – 1° The arbitration clause shall not be valid if it grants a preferred situation to a party with respect to the appointment of the arbitrator(s).

2° Without prejudice to the exceptions provided by law, an arbitration agreement concluded prior to any dispute that comes under the jurisdiction of the Labour Court pursuant to Articles 578 through 583, shall be automatically null and void.

Article 1679 – 1° The Court before which is brought a dispute that is also the object of an arbitration agreement shall declare itself without jurisdiction at the request of a party, unless the arbitration agreement is invalid with regard to this dispute or has ceased to exist; the plea must be raised before any other plea or defense.

2° A claim for conservatory or provisional measures that is brought before a Court is not inconsistent with the arbitration agreement, nor shall it imply a waiver thereof.

Article 1680 - May act as an arbitrator any person who has the capacity to enter into contracts, except those who are under age, whether they are emancipated or not, those who are provided with a legal administrator as well as those who are definitely excluded from voting or whose electoral rights are suspended.

Article 1681 – 1° The Arbitral Tribunal must be composed of an odd number of arbitrators. A sole arbitrator is allowed.

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

3° Where the parties have not determined the number of arbitrators in the arbitration agreement, and cannot agree on such a number, the arbitral tribunal shall be composed of three arbitrators.

Article 1682 - The parties may, either in the arbitration agreement or later, appoint the arbitrator(s) or request that a third party makes that appointment. Where the parties have not appointed the arbitrators nor agreed on the method of their appointment, each party shall appoint its arbitrator, or if necessary an even number of arbitrators, when the dispute arises.

Article 1683 – 1° The party, which requests the arbitration, shall notify the other party of its intention. The notification must refer to the arbitration agreement and set out the object of the dispute if it was not mentioned already in the arbitration agreement itself.

2° When there are more than one arbitrator, and when the parties are expected to appoint them, the notification shall mention the appointment of the arbitrator(s) by the party that invokes the arbitration agreement; the other party is invited, in the same document, to appoint its arbitrator(s).

3° If a third person is instructed to appoint the arbitrator(s) but fails to do so, the notification mentioned in paragraph 1 here above shall be sent to it as well with the request that it make that appointment.

4° The appointment of an arbitrator, once notified, cannot be withdrawn.

Article 1684 – 1° If the party or the third person to whom the notification mentioned in Article 1683 was made, fails to appoint the arbitrator(s) within one month of the notification, the appointment

shall be made by the president of the Civil Court at the request of the most diligent party.

2° If the parties have agreed that there shall be a sole arbitrator but fail to agree on his appointment within one month of the notification mentioned in Article 1683, his appointment shall be made as provided in paragraph 1 here above.

Article 1685 – 1° When the arbitrators that are appointed in accordance with the provisions here above are even in number, they shall appoint another arbitrator who shall chair the Arbitral Tribunal. If the arbitrators cannot reach an agreement, and unless decided otherwise by the parties, the appointment shall be made by the president of the Civil Court at the request of the most diligent party. The president can be requested to do so at the end of a one-month period beginning on the date on which the last arbitrator has accepted his mission, or on which the arbitrators' failure to agree has been recorded.

2° When there is an odd number of appointed arbitrators, they shall appoint one of themselves to chair the Arbitral Tribunal, unless the parties have agreed on a different method of nomination. Should the arbitrators be unable to agree, the appointment shall be made as provided in paragraph 1 here above.

Article 1686 – 1° In the cases mentioned in Articles 1684 and 1685, the decision of the president of the Civil Court shall not be subject to an appeal of any sort.

2° The decision of the president shall limit neither the powers of the arbitrators to rule on their own jurisdiction, nor the right of a party to invoke the Arbitral Tribunal's lack of jurisdiction.

Article 1687 – 1° Should an arbitrator die, or be unable in fact or in law to continue his mission, should he refuse it or fail to carry it out, or should the parties agree to terminate it, that arbitrator's replacement shall be done in accordance with the same rules that applied for his appointment or his nomination. However, when the arbitrator(s) were nominatively appointed in the arbitration agreement, this agreement shall automatically lapse.

2° In the cases mentioned in paragraph 1 here above, any objection shall be submitted by the most diligent party to the Civil Court. If the Court decides that there are reasons to replace the arbitrator, it shall appoint his replacement, due regard being given to the parties' intentions as expressed in the arbitration agreement.

3° The parties are entitled to derogate from the provisions of this Article.

Article 1688 - The death of a party shall neither void the arbitration agreement, nor the mission of the arbitrator(s), unless otherwise agreed by the parties.

Article 1689 - Once he has accepted his mission, an arbitrator cannot withdraw, unless the Civil Court allows him to do so at his request. The Court shall rule only after having heard the parties or have had them convoked by the Civil Court's clerk. The Court's decision shall not be subject to an appeal of any sort.

Article 1690 – 1° Arbitrators may be challenged when circumstances arise which cause legitimate doubts regarding their impartiality or independence.

2° A party can challenge an arbitrator only for cause that emerges after his appointment.

Article 1691 – 1° The challenge is notified to the arbitrators and possibly to the third party, which appointed the challenged arbitrator in accordance with the arbitration agreement, as soon as the challenging party will have learned of such cause. The arbitrators shall thereupon stay the proceedings.

2° If the challenged arbitrator does not withdraw within ten days of the notification of the challenge, the challenging party shall be informed thereof by the Arbitral Tribunal. The challenging party must summon the arbitrator and the other parties before the Civil Court no later than ten days after the notification, on pain of forfeiture, failing which the proceedings before the arbitrators shall resume automatically. The appeal against the Civil Court's ruling shall be handled in accordance with the provisions of Articles 843 through 847 of this Code.

3° When the arbitrator has withdrawn or when the challenge has been upheld by the Court, the replacement of the arbitrator shall take place in accordance with the rules that applied to his nomination or appointment; however, if the arbitrator was nominated in the arbitration agreement itself, this agreement shall automatically lapse. The parties may derogate from the provisions of this paragraph.

Article 1692 – 1° The parties may agree, in the arbitration agreement, to exclude certain categories of persons from becoming arbitrators.

2° If such an exclusion has been ignored when the Arbitral Tribunal was appointed, the irregularity must be invoked in accordance with the provisions of Article 1691.

Article 1693 – 1° Without prejudice to the provisions of Article 1694, the parties may determine the rules of the arbitral proceed-

ings as well as the seat of the arbitration. Should the parties fail to do so within the time limit set by the Arbitral Tribunal, the Arbitral Tribunal shall determine them itself. If the seat of the arbitration has not been determined by the parties or by the arbitrators, the place where the award is rendered, as stated in the award, shall serve as the seat of the arbitration.

2° Unless otherwise agreed by the parties, and after consulting with them, the Arbitral Tribunal may hold its hearings and meetings in any other location that it considers appropriate.

3° The chairman of the Arbitral Tribunal shall set the schedule of the hearings and shall preside over them.

Article 1694 – 1° The Arbitral Tribunal must allow each party to assert their rights and put forth their arguments.

2° The Arbitral Tribunal shall decide after having heard the oral presentations. The parties may validly be convoked by registered mail unless they have agreed to other means of convocation. The parties may appear in person.

3° The proceedings are in writing when the parties have so agreed, or whenever they have waived their right to oral presentations.

4° Each party has the right to be represented either by a lawyer, or by a representative specially empowered in writing and admitted by the Arbitral Tribunal. Each party may be assisted by a lawyer or by any other person of its choice that is admitted by the Arbitral Tribunal. The parties may not be represented or assisted by a business agent.

Article 1695 - Should a party that has been validly convoked fail to appear or to present its arguments in the allotted time limit, without a legitimate excuse, the Arbitral Tribunal may proceed and decide the matter, unless the other party requests a postponement.

Article 1696 – 1° Without prejudice to Article 1679, paragraph 2, the Arbitral Tribunal may order interim and conservatory measures at the request of a party, with the exception of attachment orders.

2° Unless otherwise agreed by the parties, the Arbitral Tribunal shall freely assess the admissibility and weight of the evidence.

3° The Arbitral Tribunal may call witnesses, appoint experts, organize site visits, order the personal appearance of the parties. The Arbitral Tribunal may administer a decisive oath and request from the parties a supplementary oath. It may also order a party to disclose documents under the terms of Article 877 of this Code.

4° When the Arbitral Tribunal has called witnesses and when those witnesses fail to appear, or refuse the oath, or refuse to testify, the Arbitral Tribunal shall allow the parties, or one of them alone, to petition the Civil Court to appoint a magistrate to conduct the hearing of the witnesses. This shall be done as in civil proceedings. The time limits of the arbitral proceedings are automatically suspended until the end of this inquiry.

5° The Arbitral Tribunal may not order the verification of the authenticity of documents nor rule on disputes relating to the submission of documents or to allegedly forged documents. In such cases, it shall leave it to the parties to refer the matter to the Civil Court within a given time limit.

6° The time limits of the arbitral proceedings are automatically stayed until the Arbitral Tribunal will have been officially informed by the most diligent party of a final decision on the incident.

Article 1696- bis – 1° Any interested third party may request from the Arbitral Tribunal an ex parte intervention in the proceedings. The request must be put to the Arbitral Tribunal in writing, and the tribunal shall communicate it to the parties.

2° A party may call upon a third party to intervene in the proceedings.

In any event, the admissibility of such interventions requires an arbitration agreement between the third party and the parties involved in the arbitration. That agreement is subject, moreover, to the unanimous consent of the Arbitral Tribunal.

Article 1697 – 1° The Arbitral Tribunal is empowered to rule on its own jurisdiction and, to this end, examine the validity of the arbitration agreement.

2° A finding that the contract is null and void shall not automatically entail the nullity of the arbitration agreement that it contains.

3° The Arbitral Tribunal's decision that it has jurisdiction may only be contested together with the award on the main issue and through the same procedure before the Civil Court. The Civil Court may, at the request of one of the parties, rule on the merits of the Arbitral Tribunal's decision that it lacks jurisdiction.

4° The fact that a party has appointed an arbitrator shall not prevent it from claiming that the Arbitral Tribunal lacks jurisdiction.

Article 1698 – 1° Until the date on which the first arbitrator accepts his mission, either party may determine the time limit within which the Arbitral Tribunal must render its award, or the terms for setting such a time limit.

2° When the parties have not set the time limit nor determined the terms for doing so, and when the Arbitral Tribunal is late in rendering its award, and when a period of six months has elapsed between the date on which all of the arbitrators have accepted their mission, the Civil Court may, at the request of one of the parties, impose a time limit on the arbitrators. The Civil Court's decision shall be final.

3° The mission of the arbitrators ends if the award is not rendered in a timely manner, unless this time limit is extended by an agreement between the parties.

4° When the arbitrators have been named in the arbitration agreement, and when the award is not rendered in time, the arbitration agreement shall automatically lapse, unless otherwise agreed by the parties.

Article 1699 - The Arbitral Tribunal shall make a final decision or render interlocutory decisions by way of one or several awards.

Article 1700 - Unless otherwise agreed by the parties, the arbitrators shall decide in accordance with the rules of law.

When a public legal entity is a party to an arbitration agreement, the arbitrators shall always decide in accordance with the rules of law, without prejudice to special legal provisions.

Article 1701 – 1° The award shall be rendered after a deliberation between all of the arbitrators. The award is rendered at an absolute majority, unless the parties have agreed to another type of majority.

2° The parties are also free to decide that the chairman's vote shall be decisive where no majority can be formed.

3° Unless stipulated to the contrary, where the arbitrators rule on sums of money and where no majority is formed on the sums that are to be awarded, the votes in favor of the higher figure are counted as being in favor of the figure that is immediately lower, until a majority is formed.

4° The award is rendered in writing and signed by the arbitrators. Should one or more of the arbitrator(s) be unable to sign, or refuse to do so, mention shall be made of it in the award; however, the award must bear at least as many signatures as are necessary to form a majority of arbitrators.

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

- (a) the names and domiciles of the arbitrators;
- (b) the names and domiciles of the parties;
- (c) the object of the dispute;

- (d) the date on which it is rendered;
- (e) the seat of the arbitration and the place where the award is rendered.

6° The award must be reasoned.

Article 1702 – 1° The chairman of the Tribunal shall notify the award to each party and send them a copy, signed in accordance with Article 1701 - 4E.

2° The chairman of the Arbitral Tribunal shall file the original copy of the award with the Office of the Civil Court, and shall notify the parties of this filing.

3° The mission of the arbitrators ends with the notification of the final award to the parties and its filing in accordance with the provisions mentioned here above.

Article 1702 – bis – 1° Within thirty days of the notification of the award, and unless the parties have agreed on another time limit,

- (a) One of the parties may request the Arbitral Tribunal to correct any clerical, computational or typographical error, or any other error of a similar nature, provided it notifies its request to the other party.
- (b) One of the parties may request that the Arbitral Tribunal interpret a given point or passage of its award, provided the parties have so agreed and provided one party has notified its request to the other.

If the Arbitral Tribunal considers the request founded, it shall correct or interpret its award within thirty days of the request. The interpretation shall form part of the award.

2° The Arbitral Tribunal may, on its own motion, correct any error mentioned in paragraph 1 (a) here above within thirty days of the date of the award.

3° The Arbitral Tribunal may, if necessary, extend the time limit in which it is allowed to correct or interpret its award pursuant to paragraph 1 here above.

4° The provisions of Article 1701 apply to the correction or interpretation of the award.

5° When the same arbitrators cannot be reunited, the request for interpretation or correction of the award shall be submitted to the Civil Court, whose president has jurisdiction to render the award enforceable in accordance with the rules of jurisdiction set forth in Articles 1717 and 1719, paragraph 2.

Article 1703 – 1° Unless the award is contrary to public policy or unless the dispute is not arbitrable, the award shall have authority once it has been notified in accordance with article 1702, paragraph 1, and when it can no longer be contested before the arbitrators.

2° An appeal can only be made against an arbitral award if the parties have provided for that possibility in the arbitration agreement. Unless provided otherwise, the time limit for an appeal is one month as of the notification of the award.

Article 1704 – 1° The arbitral award may only be contested before the Civil Court through an application for setting it aside, and it may be set aside solely for a cause mentioned in this Article.

2° The arbitral award may be set aside

- (a) If the decision is contrary to public policy;
- (b) If the dispute was not arbitrable;
- (c) If no valid arbitration agreement exists;
- (d) If the Arbitral Tribunal has exceeded its jurisdiction or its powers;
- (e) If the Arbitral Tribunal omitted to decide on one or more issues of the dispute, and if such issues cannot be separated from the issues on which it did decide;
- (f) If the award has been rendered by an arbitral tribunal that was irregularly appointed;
- (g) If the parties were not given the opportunity to present their case and their arguments, or if any other imperative rule of the arbitral proceedings has been violated, provided such a violation of the rules had a bearing on the decision;
- (h) If the formalities prescribed in Article 1701, paragraph 4, have not been fulfilled;
- (i) If the award is not reasoned;
- (j) If the award contains provisions that contradict themselves.

3° The award may also be set aside:

- (a) If it was obtained by fraud;
- (b) If it is based on evidence that is found to be false by a final Court decision, or on evidence that is acknowledged to be false;
- (c) If, since the award was rendered, a document or other evidence were found that would have had a decisive influence on the award, and that has been held back by the other party.

4° The causes mentioned in paragraphs 2 (c), (d) and (f) shall not cause the award to be set aside, whenever the party that invokes them has learned of them in the course of the proceedings but failed to invoke them at that time.

5° The causes for challenging or expelling an arbitrator mentioned in Articles 1690 and 1692 do not constitute causes for having the award set aside in the sense of paragraph 2 (f) here above, even if such causes became known only after the rendering of the award.

Article 1705 - If there is cause for having one part of the award set aside, it alone shall be set aside if it may be dissociated from the other parts of the award.

Article 1706 – 1° The causes for having an award set aside must be put forth by a party, on pain of being forfeited, in one single procedure, except however for the causes mentioned in Article 1704, paragraph 3, when such causes are discovered later.

2° The request for setting aside the award is admissible only if the award can no longer be contested before the arbitrators.

Article 1707 – 1° The request for setting aside the award based on one of the causes mentioned in Article 1704, paragraph 2 (c) through (j) must, on pain of being forfeited, be filed within three months of the date on which it was notified to the parties; however, that time limit cannot start before the day on which the award can no longer be contested before the arbitrators.

2° Respondent in a procedure for having the award set aside may itself, in the same procedure, request that the award be set aside even if the time limit mentioned in paragraph 1 has expired.

3° The claim for having the award set aside that is based on one of the causes mentioned in Article 1704, paragraph 3, must be filed within three months either of the discovery of the fraud, or of the document or other evidence, or of the day on which the evidence was declared false, or acknowledged to be so, and provided always that a time limit of five years beginning on the day on which the award was notified to the parties in accordance with Article 1702, paragraph 1, has not expired.

4° The Court before which a request for the setting aside of an award will have been brought shall automatically verify that the award is not contrary to public policy, and that the dispute was arbitrable.

Article 1708 – 1° When the Arbitral Tribunal has omitted to decide on one or more issues of the dispute which cannot be separated from those on which it has decided, it may, at the request of a party,

complete the award, even if the time limits mentioned in Article 1698 have expired, unless the other party disputes the omission or that the omitted issues cannot be separated from those which the tribunal has decided.

2° In that case, the dispute shall be brought before the Civil Court by the most diligent party. Should the Civil Court decide that the omissions can be separated from those issues on which the Arbitral Tribunal did decide, it shall refer the parties back to the Arbitral Tribunal in order to complete the award.

Article 1709 - The arbitrators may order their award to be provisionally enforceable in spite of an appeal, and without prejudice to the rules of consignment. They may also subordinate provisional enforcement to the establishment of security in accordance with the provisions of this Code.

Article 1709-bis - The arbitrators may order a party to pay a penalty. Articles 1385-bis through octiès apply *mutatis mutandis*.

Article 1710 – 1° The award can be enforced only if it has been declared enforceable by the president of the Civil Court at the request of an interested party; the party against which the enforcement is requested cannot, at this stage of the proceedings, claim to be heard.

2° The president can render the award enforceable only if it can no longer be contested before the arbitrator(s) or if the arbitrators have declared it to be provisionally enforceable notwithstanding an appeal. The decision of the president is enforceable notwithstanding an appeal, without prejudice to Article 1714.

3° The president shall dismiss the request if the award or its enforcement is contrary to public policy, or if the dispute was not arbitrable.

4° The decision shall be notified, by judicial post, by the Office of the Court within five days of its pronouncement.

Article 1711 – 1° Where the request is dismissed, the petitioner may file an appeal with the Court of Appeal within one month of its notification.

This appeal is served by a bailiff, on the party against which the enforcement of the award is requested in a summons to appear before the Court of Appeal.

2° Should that party wish to request that the award be set aside without having already entered a claim for that effect, it must bring such a claim before the Civil Court, on pain of forfeiture, within one month of the notification of the appeal. The Court of Appeal

shall postpone its decision until a final decision will have been rendered on the issue of having the award set aside.

Article 1712 – 1° The decision that grants the enforceability to the award must be notified by the petitioner to the other party. Within one month of its notification, an opposition against the decision may be filed before the Civil Court.

2° The party which files this opposition and which requests as well the setting aside of the award itself without having already done so, must enter its claim for setting aside in the same manner and within the same time limit as mentioned in paragraph 1 here above, on pain of forfeiture. The party that claims that the award must be set aside without also filing an opposition in accordance with paragraph 1 here above must, on pain of forfeiture, enter its claim within the time limit provided by paragraph 1.

Article 1713 – 1° In the cases mentioned in Articles 1711 and 1712, the requests for having the award set aside which are based on the absence of a valid arbitration clause, are not subject to the time limit mentioned in Article 1707, paragraph 1.

2° Without prejudice to the provisions of Article 1707, paragraph 3, the party that learned of one of the causes for setting aside the award mentioned in Article 1704, paragraph 3, only after the notification of the decision granting enforcement, may request nevertheless that the award be set aside for such cause in spite of the fact that the one-month time limits mentioned in Articles 1711 and 1712 have expired.

Article 1714 – 1° The Court before which is brought the motion against the decision that granted enforceability or the request to have the award set aside, may order, at the request of one of the parties, a stay of the enforcement of the award, or make the enforcement subject to the establishment of security.

2° The decision that grants the enforceability to the award becomes ineffective when the award is set aside.

Article 1715 – 1° When, during the arbitral proceedings, the parties settle the dispute submitted to the Arbitral Tribunal, their agreement may be recorded in a document established by the Tribunal and signed by the arbitrators as well as by the parties. This document is subject to the provisions of Article 1702, paragraph 2; it can receive a seal of enforceability from the president of the Civil Court at the request of one of the parties.

2° The request shall be dismissed if the settlement or its enforcement is contrary to public policy or if the dispute is not arbitrable.

3° The decision is notified by the Office of the Civil Court within five days of its pronouncement.

Article 1716 – 1° The decision which grants enforceability to the award by consent must be notified by the petitioner to the other party. Within one month of the date of its notification, an opposition may be filed against it before the Civil Court.

2° If the request is denied, the petitioner may file an appeal in accordance with Article 1711.

3° The decision that grants enforceability to the award by consent becomes ineffective in the event the award is set aside.

Article 1717 – 1° Subject to the provisions of Articles 1719, paragraph 2, the Court that has jurisdiction for applying Chapter VI of this Code shall be the Court mentioned in the arbitration agreement or any later agreement reached prior to the determination of the seat of the arbitration.

2° When no agreement exists, the Court of jurisdiction shall be the Court of the seat of the arbitration. When no seat has been determined, the Court of jurisdiction shall be the Court that would have had jurisdiction, had the matter not been submitted to arbitration.

3° [...]

4° The parties may, by an explicit declaration in the arbitration agreement or by a later agreement, exclude any application for the setting aside of an arbitral award, in case none of them is a physical person of Belgian nationality or a physical person having his normal residence in Belgium or a legal person having its registered office or a branch office in Belgium.

Article 1718 – 1° When an agreement to arbitrate is reached regarding an appeal against a decision of the Civil Court or of the Commercial Court, the arbitral award can only be enforced after the Court of Appeal has granted enforcement and after the party against which the enforcement is requested has been summoned.

2° Should that party claim to have the award set aside without having previously filed an application in this respect, it must enter its claim, on pain of forfeiture, in the same proceedings, subject to the provisions of Article 1713.

3° The decisions of the Court of Appeals are not subject to appeal.

Article 1719 – 1° The president of the Civil Court shall, upon request, rule on the enforceability of foreign awards rendered on the basis of an arbitration agreement.

2° The claim is brought before the president of the Civil Court in

the jurisdiction of which the person against whom the enforcement is requested has his domicile or, in the absence of a domicile, his place of residence. If that person is neither domiciled in or a resident of Belgium, the request is made to the president of the Civil Court where the award is to be enforced.

3° The petitioner shall elect domicile in the jurisdiction of the Court.

4° He shall enclose with his request the original copy of the award and of the arbitration agreement, or any copy thereof that fulfils the conditions of authenticity.

5° The president of the Court examines the requests; to this end, he may summon to chambers the petitioner as well as the party against which the enforcement is requested. The summons is sent by the Office of the Court.

Article 1720 - Within five days of its pronouncement, the decision of the Civil Court is notified to the petitioner by the Office of the Court.

Article 1721 - When the request is denied, the petitioner may, within one month of its notification, appeal to the Court of Appeal. This appeal is served by a bailiff to the party against which the enforcement has been requested, with a summons to appear before the Court of Appeal.

Article 1722 - The decision, which grants enforceability, must be communicated by the petitioner to the person against whom the enforcement is requested. An opposition may be filed against this decision with the Civil Court within one month of its notification.

Article 1723 - Unless there is a reason to apply an existing treaty between Belgium and the country in which the award was rendered, the Court shall deny enforceability:

1° If the award can still be appealed before the arbitrators and if the arbitrators did not make the award enforceable notwithstanding an appeal.

2° If the award or its enforcement is contrary to public policy or if the dispute was not arbitrable.

3° If cause for having the award set aside pursuant to Article 1704 is established.

SCHEDULE IV GENERAL ADMINISTRATION AND SECRETARIAT

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