

C. A. R. E. N. ARBITRATION RULES

PART I - Initial Considerations

Clause 1 - These rules apply when CAREN has been appointed following an arbitration clause in a contract or an agreement to arbitrate.

CAREN is responsible for the organisation of those arbitrations both national and international that are entrusted to it.

A CAREN Arbitration Committee is responsible for the organisation and supervision of arbitrations carried out under CAREN's jurisdiction. A Secretariat exists which acts as clerk for the arbitration and also provides support for the Arbitration Committee.

Definitions

Clause 1.1 – “Arbitration Committee” or “Committee” means the Arbitration Committee referred to above.

Arbitration Agreement" means the agreement whereby CAREN is given jurisdiction whether by way of an arbitration clause or by agreement to arbitrate.

Tribunal" is the Arbitrator(s) appointed under the CAREN rules

Time Limits

Clause 1.2 - The time limits mentioned in these rules are in months. Time expires at midnight on the day of the final month being the same numbered day of the month as the event decision or service causing time to run. In the event that the final month lacks the same numbered day of the month time will run out on the last day of that month.

Time that would normally expire on a public holiday or a non-working day is extended until the first working day thereafter.

Time runs in the case of giving a notice from the date on which that notice was sent.

Domicile

Clause 1.3 - From the time when the mission statement referred to in Clause 16 hereof has been registered with the secretariat the parties' domicile is as set out therein.

Manner of service

Clause 1.4 - All notices or correspondence that are required under these rules to be effected by the committee or the parties must be effected by registered post with receipt or by such procedure as may be the equivalent in the country to which the correspondence is being sent by post or by any means whereby there is written proof of a document having been sent and received. The parties must use the most rapid means of communication possible.

PART II - Appointment of CAREN as Arbitrator

Request for Arbitration

Clause 2 - The parties themselves are responsible for bringing a matter to arbitration. They are also at liberty to bring that appointment to an end before it naturally determines as a result of the Award being made.

Arbitration proceedings are initiated by a request to arbitrate sent to the secretariat who will date it and record that it has been registered.

The request must include :

- The family name, personal name, title and address of the party making the request and where appropriate all details necessary to identify a body corporate and the names, Christian names and offices held by the officers acting in the company's name ;
- The agreement to arbitrate;
- A summary of the dispute;
- The claimant's submission;
- Any submission as to the number of arbitrators and the manner by which they are to be chosen.

Inadmissible Request for Arbitration

Clause 3 - When the request for arbitration is defective, either because of the nature of the claim or as a result of the drafting, and as a result the request fails to establish the existence of an agreement to arbitrate between the parties or the jurisdiction of CAREN, the secretariat will ask the respondent for its observations.

If the respondent objects to CAREN's jurisdiction or does not reply within one month of receipt of the request for its observation, the secretariat will advise the claimant that, in the circumstances, arbitration cannot take place.

The Arbitration Committee will give a ruling on all such problems.

Service of Notice upon the Defendant

Clause 4 - When the request for arbitration appears to be in order, the secretariat will send one copy of the request and the documents accompanying it to the defendant. Using the language of the arbitration clause or agreement the notice will also make reference in the clearest terms to the provisions of Clause 6 hereof.

Respondent's Reply

Clause 5 - Within one month of receipt of this information the respondent shall notify the secretariat of its requirements regarding the number of arbitrators and the manner of their choice. Should it be the case that he accepts the proposal set out in the request, he may, if need be, appoint an arbitrator. The respondent shall briefly set out the grounds for opposing the claimant's case. He may disclose his documents or raise a counterclaim. The secretariat will advise the Claimant of the Respondent's reply.

Failure of Respondent to Reply

Clause 6 - Arbitration may proceed and an award may be made despite the objection or non-participation of the respondent.

Before the Arbitration Proceedings begin, the arbitrator will satisfy himself that service has been properly effected upon the respondent.

PART III - Constitution of the Arbitration Tribunal

Number of Arbitrators

Clause 7 - Arbitration can be by one or three arbitrators.

In the following Clauses the expression nominated arbitrator or the nomination of an arbitrator applies both to a nomination of an arbitrator by one of the parties or by the Arbitration Committee.

Appointed arbitrator or the appointment of an arbitrator refers to an arbitrator who has accepted to act as such.

Enrolled or Registered Arbitrator means a person enrolled on the list of CAREN Arbitrators.

The jurisdiction of CAREN is deemed to begin once the last of the arbitrators has been appointed and has accepted to act as such.

Appointment of Arbitrators

Clause 8-1 - When the parties have agreed that the matter shall be decided by a sole arbitrator they may by agreement appoint an arbitrator and ask the Committee to confirm such appointment. In the absence of agreement, the arbitrator will be appointed by the Arbitration Committee after the expiry of one month from the date of notification of the request for arbitration to the respondent.

Clause 8-2 - When three arbitrators are to be appointed, each party in the request for arbitration, or in the reply thereto, shall nominate an arbitrator for confirmation by the Committee.

Should one of the parties fail to do so, that appointment shall be made by the Committee.

Where there is more than one Respondent or Claimant, the individuals making up the party shall come to agreement for a nomination of their arbitrator.

In default of agreement, an arbitrator will be appointed by the Committee.

The third arbitrator, who shall be chairperson, is appointed by the Committee unless the parties agreed that the arbitrators they have nominated shall choose the third arbitrator within a fixed period of time. In this case the Committee will approve the appointment of the third arbitrator.

The third arbitrator will be appointed by the Committee in the event that, at the expiry of the time limits fixed by the parties or imposed by the Court, the arbitrators nominated by the parties have not been able to agree on an appointment.

Clause 8-3 - Where the arbitration agreement does not specify the number of arbitrators, the Tribunal shall consist of one arbitrator unless the matters in issue appear to the Arbitration Committee to justify the appointment of three arbitrators.

The Parties shall, within one month of the service of the request for arbitration, take steps to nominate the arbitrator(s). The Arbitration Committee shall appoint the arbitrators in default of agreement between parties.

Approval of Arbitrators

Clause 9 - When the nomination of an arbitrator is not effected by the Arbitration Committee, the arbitrator must be approved by the Arbitration Committee. In the event that the Committee

do not approve, it must propose a new arbitrator and submit the arbitrator's name for approval by the party whose nominee was not approved.

In the event that the party concerned does not accept the new nominee within one month of nomination, the Committee will appoint an arbitrator from the CAREN list of arbitrators.

Acceptance of office of Arbitrator

Clause 10 - Acceptance of an arbitration mission shall be expressed in writing and sent to the secretariat.

This commits the arbitrator to act throughout the matter up to its conclusion.

The secretariat shall notify all **the parties** of the appointment.

Challenging and Dismissal of Arbitrators

Clause 11 - Arbitrators must remain independent and impartial throughout. Any arbitrator nominated who believes that there may be a reason for his admissibility to be challenged must notify the parties and the secretariat. In this case, he can only accept appointment with the agreement of the parties. The arbitrator once appointed shall refrain from such acts as shall in the eyes of the parties raise doubts as to his independence or to his impartiality. Should such circumstances arise after the arbitrator has accepted to act he shall immediately notify the arbitration committee.

Any party can require the Arbitration Committee to take steps to challenge an arbitrator's appointment. The request shall be sent to the secretariat within one month of notification of the appointment of the arbitrator or within one month of the occurrence of the event or disclosure of the information or fact relied upon as the reason for the challenge. The time limits are strict and must be complied with if a valid request is to be made.

The Arbitration Committee has an inherent power to object to an arbitrator who has been appointed when his independence or his impartiality appears to be in doubt or has been discovered after his appointment. It has a further inherent jurisdiction to cancel the appointment of an arbitrator who is not complying with the terms of his appointment and who fails to ensure that the arbitration is completed within a reasonable time. The Committee shall give its decision after hearing the arbitrator concerned, the parties to the arbitration and, if the need be and is believed that the same may be of relevance, the other arbitrators.

When withdrawal or the cancellation of an appointment of an arbitrator occurs, the Arbitration Committee will take steps to replace him. The Committee will propose the name of a new

arbitrator for the agreement of the parties. In the event of failure of the parties to agree within one month, the Committee will appoint an arbitrator from the approved list.

Replacement of Arbitrators

Clause 12 - Where unforeseen circumstances prevent an arbitrator from fulfilling his role, the Committee may give notice in writing to this effect and seek a solution with the agreement of the parties. Should agreement not be reached within one month of the date of the said circumstances or their becoming known, the Committee shall appoint an arbitrator from the approved list.

Failure to Appoint Arbitrators within Time Limits

Clause 13 - If the arbitrator(s) has/have not been appointed within the three months of the date on which the request for arbitration was served upon the respondent and, when the arbitration is taking place in France or where the parties thereto have consented to French procedural law applying, either party may apply for such appointment to be made by summons to the President of the Tribunal de Grande Instance (of Lille) (High Court) (in Lille). That same party shall serve a copy of the summons and the Court's decision upon the secretariat.

PART IV - The Hearing

A. Place of Hearing

Clause 14 - Unless the parties decide otherwise, the hearing shall take place in Lille (France). Nevertheless, the Committee may decide on another venue in view of the circumstances of the case.

B. Language of Arbitration

Clause 15 - If the parties have not chosen the applicable language this will be fixed by the Court taking into account the circumstances of the case and the language of the Contract.

C. Procedure for the Hearing

Statement of Facts /Mission Statement

Clause 16 - As soon as the Tribunal has been established and the matters in issue have been set out by the statements of the parties that follow the request for arbitration and the Respondent's reply, the Tribunal will set out a statement of the issues in question which will contain but not exclusively:

- Identification of the parties and of the arbitrators.
- Whether the arbitration is international or internal.
- The address and country of residence chosen by the parties for the purpose of the proceedings.
- Identifying the matter in issue.
- Setting out such matters as may be relevant to the choice of law and of procedure and, if the case may be, the giving of power to the Tribunal to act as mediator (amiable compositeur) in accordance with clauses 29 and 31 hereof.
- Indicating the place where the arbitration shall take place.
- The language for the arbitration.
- Setting up the time limits for discovery of documents and schedules of evidence.
- Setting out the time limits applicable under the two first paragraphs of clause 26 for the making of the award.

Nature of the mission statement

Clause 17 - The mission statement shall be signed by the arbitrators and by the parties to the arbitration.

If one of the parties refuses to sign, the tribunal shall draw attention to this refusal, the reasons which have brought about this refusal and the answer given to these reasons.

Once it has been signed and endorsed with the conditions mentioned in the preceding paragraph, the mission statement should be dated and sent to the secretariat for the matter to be listed.

However, should all the parties refuse to sign, the tribunal will be suspended on pain of the abolition of this body following a three month period.

Validity of the Arbitration Agreement

Clause 18 - The Tribunal is empowered to give a ruling, either at the request of a party or of its inherent jurisdiction, upon the existence or the validity of the agreement or of its own jurisdiction.

Amendments to the Subject Matter in Issue

Clause 19 - Amendments are permitted during the course of the arbitration to include related matters that the Tribunal regards as being linked to the original dispute.

When the Tribunal accepts the amendments, it will issue a supplemental statement in order that the matters in issue are clearly set out. The provisions of clause 17 apply to the amended statement.

Joinder of Arbitrations

Clause 20 - A Party may apply to the Arbitration Committee for the case to be joined with other cases, where such a link exists between the cases that the proper administration of justice requires joinder.

If joinder is ordered on matters which are in the same arbitral jurisdiction, then, by virtue of the order, the Tribunal's jurisdiction is extended to cover all the cases.

If joinder is ordered where more than one jurisdiction is involved, the order for joinder shall establish a Tribunal consisting of three arbitrators. The two arbitrators or the two chairmen of the arbitration bodies involved shall appoint a third arbitrator from the approved list.

In the event that it proves impossible to appoint the third arbitrator within one month of the order, the order shall lapse.

Rules of Procedure

Clause 21 - Rules of procedure shall be in accordance with the law applicable chosen by the parties and in default of such choice with the Tribunal's own rules.

When arbitration questions a country's commercial interests, the procedure is subject to these rules whenever there is no conflict with the law of that country.

Clause 22 - The hearings shall be in private unless the parties agree to the contrary.

Clause 23 - The arbitration Tribunal shall with the agreement of the parties, have power to decline to receive oral evidence or oral admissions whether generally or in respect of such matter as he/they may specify and to make their determination on the basis of written submissions only.

Presence of the parties

Clause 24 - The Tribunal shall, in all circumstances, follow the principles and ensure that the other parties follow the principle of the right to be heard. No party can be forced to take part in arbitration proceedings without having been heard or properly summoned thereto.

The Tribunal may request that parties provide explanations of facts pleaded in the matter as well as explanations of the law applicable which the Tribunal considers necessary for the dispute to be resolved.

The parties shall notify each other of the evidence upon which they propose to rely to base their claims, and the documents upon which they will rely and intend to produce and the precedents

and legal arguments upon which they will rely in order that each one of them can properly prepare their case for the hearing.

From the date upon which the arbitration has been requested, all communications between the parties should be made via the secretariat or directly but with a copy to the secretariat.

From the moment of the commencement of the arbitration, written notices shall be served upon parties at the address given by them in the mission statement.

Means of Investigation

Clause 25 - The Tribunal may order at a request of a party any admissible investigation and, in particular, it may appoint any person of its choice to clarify a question of fact which requires explanation by an expert.

The Tribunal can also visit sites and take evidence from parties agreeing thereto.

If one party refuses to attend for a joint meeting with the other party the Tribunal may draw from the refusal all necessary conclusions.

No investigation will be ordered under this clause to make up for a failure in preparing its case by the party who makes the request.

The Tribunal will restrict such investigations to those that are sufficient in order to resolve the dispute between the parties, endeavouring to limit the same to those that are the most simple and the least burdensome.

Time Limit for the Award

Clause 26 - The Arbitration agreement or a separate document will impose on the Tribunal the time limits within which it must deliver its ruling.

Failing the fixing of a time limit, the arbitration mission shall not last longer than six months from the date of notification of the acceptance of the last of the arbitrators to the parties in accordance with Clause 10 of these rules.

The Tribunal may, with the approval of the Committee, or of its inherent jurisdiction, extend the time limit under the agreement or the rules for a period of three months. Such an extension is only permitted once.

The time limits under the Contract or the rules may nevertheless always be extended for an unlimited time with the agreement of the parties.

A party or the Tribunal may always request the Committee to extend the agreed time limits for a limited period. The Committee may grant such requests upon giving reasons if it is satisfied that, for reasons not attributable to the arbitrators, the termination of the arbitration proceedings has been delayed.

PART V - INTERIM and PROTECTIVE ORDERS

Clause 27 - Any party may request the tribunal to make interim orders that may be found necessary concerning the subject matter of the dispute. The tribunal may require security for the costs incurred by such interlocutory applications.

Clause 28 - The terms of the previous clause nevertheless shall not prevent a party applying to the appropriate judicial authorities for interim or protective orders either before the matter has been submitted to the tribunal or in exceptional circumstances when extremely urgent during the course of the hearing. However, an interim payment shall not be the subject of a request to the judicial authorities once the tribunal has been seised of the matter.

PART VI - THE AWARD

A Decision ex aequo et bono

Clause 29 - The Tribunal may give its ruling as "amiable compositeur" (ex aequo et bono) if the arbitration agreement or subsequent agreement between the parties entitles it so to act.

Applicable Law

Clause 30 - Where the subject matter of an arbitration involves business dealings within one jurisdiction the applicable law is that of the said country.

Where the arbitration is international the tribunal will decide the issues in accordance with the law chosen by the parties. In default of such choice the tribunal will decide the applicable law under which to decide the issues.

The tribunal will take note in all cases of the practices usual in any particular trade.

Mediation (conciliation)

Clause 31 - Throughout the arbitration proceedings the parties may, either of their own initiative or at that of the tribunal reach an agreement on all or part of the matters in dispute.

The nature of the agreement even if it relates to part only of the matters in dispute shall be set out in a signed document and transmitted without delay to the tribunal. The arbitrators may sign this formal document. The tribunal may at the request of the parties make an award based on the agreement between the parties. Clauses 34 and 35 hereof shall apply to such an award.

The award

Clause 32 - The tribunal can give final awards as well as interim interlocutory awards limited in their scope.

Such awards are made in writing and shall contain reasons even when the tribunal gives a ruling in its capacity as amiable compositeur.

The tribunal may order its award to be implemented forthwith. The parties undertake to comply with the award immediately and to act in good faith expressly agreeing not to follow other courses of action.

Clause 33 - When an award is made by three arbitrators it is a majority decision. In the event that no majority can be obtained (i.e. a tie) the Chair of the tribunal alone will make the award having advised the committee of the reasons that required him to do so.

Draft Award

Clause 34 - The draft award must be signed by the arbitrators and then forwarded to the committee for its endorsement.

The committee may recommend alterations of a presentational nature. It may also draw the attention of the arbitrators to matters of content.

When the committee's approval has been endorsed upon an award which has not yet been signed by each of the arbitrators the absence of such signature shall be noted.

Contents of the Award

Clause 35 - The award shall have endorsed thereon the date and place where it was given, the name of the arbitrators concerned, the name surname and titles of the parties concerned as well

as their address or registered office and if appropriate the names of the lawyers or all other persons who represented or assisted the parties.

The award is then signed by the arbitrators.

It shall not disclose whether the decision was unanimous, by a majority or decided on the Chair's casting vote. Any dissenting decision shall not be set out in the award nor annexed thereto.

Confidentiality

Clause 36 - The award is secret and shall not be published without the agreement of the parties. CAREN may publish details of decisions made in arbitrations effected under its aegis. Such summaries shall maintain the anonymity of the parties and will only reveal those facts which may be necessary for an understanding of the matter and of the decision which was reached.

PART VII - Rectification and correction of material errors on appreciation of the facts and for increase or reduction of quantum of the award

Clause 37 - The award brings to an end the tribunal's role in the dispute which it was asked to decide.

However the tribunal may upon formal request made by any party be asked to decide matters of interpretation, correction of material error in order that the award may be finalised or to reinforce it if the tribunal has failed to make a decision on every matter put before it or if it has gone beyond the limit of that which it was required to decide. The tribunal will give reasons after having heard the parties.

The remedies set out in the preceding paragraph shall only be admissible within six months of the date of the award. Material errors and omissions can also be corrected by the tribunal of its inherent jurisdiction the parties having been heard or summoned to make representations.

Should it prove impossible to assemble the same tribunal reference must be made to the provisions of clause 12 hereof.

The provisions of Clauses 34 and 35 hereof apply also to the interpretative and corrective decisions. Such decisions shall require endorsement by the committee and be registered with the secretary who shall place them with the original award.

PART VIII - COSTS AND FEES

Clause 38 - An administration fee for the arbitration and the fees of the arbitrators is chargeable in accordance with the CAREN scale of fees annexed.

When the amount in question has to be evaluated this is done by the committee as soon as possible after the date of filing the mission statement by the secretariat.

When the parties do not wish to reveal the value of the matters at stake the costs and fees are left entirely to the discretion of the committee.

The committee can reduce the amounts which would apply if the scale were used.

The committee can increase the amount of the costs for administration when in the course of the proceedings additional matters have arisen which justify an increase.

In exceptional cases and for good reasons given, the committee can increase the fees paid to the arbitrator.

Clause 39 - The secretariat or, in case of difficulty, the Committee, shall set the amount and the due date of the deposit on account to cover costs and fees.

This amount shall be divided equally between the parties.

If one or other of the parties fails to make payment, the claimant is responsible for the payment of the amounts due by the defaulting parties from the date of the request to do so sent to him by the secretariat.

Failure by the claimant to pay the deposit on account to cover the administrative costs within a period of two months from the date of the request to do so sent to him by the secretariat or the arbitration committee will result in the abolition of the arbitration body.

PART IX - SIMPLIFIED ARBITRATION

Clause 40-1 - The provisions of the present Part IX apply , unless the parties agree otherwise, where the matter at stake fulfils the three following conditions :

- two persons only are concerned
- the value of the dispute does not exceed the sum fixed in the table alluded to in clause 57
- the claimant's credit is certain (not seriously challenged), liquid (its amount is determined) and exigible (date of payment expired)

Clause 40-2 - The amount of the claimant's request is the capital sum, interests and costs excluded . It cannot be increased .

The respondent's eventual counterclaim is of no effect for the determination of the value of the dispute, unless it appears that the claimant's request has been reduced or even presented in order to avoid the normal arbitration procedure.

If that is the case the Arbitration Committee will give a ruling.

The request

Clause 41-1 - The request for arbitration is presented on a form procured from the secretary.

It contains at least the mentions of that form.

The evidence upon which the claimant bases his demand shall be joigned.

The whole is established in duplicate.

Clause 41-2 - One exemplar is sent directly by the claimant to the respondent by registered post with receipt or by any equivalent mean.

The other one is sent to the secretary or deposited upon receipt,with payment of the deposit fixed by clause 47-1 and the proof of the sending of the request to the respondent.

The answer

Clause 42-1 - The answer is submitted to the same rules as the request.

Clause 42-2 - The answer shall be sent within ten days of the receipt of the request. A late answer should be rejected, unless the claimant or the arbitrator consents to admit it.

Clause 42-3 - The respondent pays to the secretary the same deposit as the claimant and in the same time furnishes the evidence of the sending of his answer to the claimant.

Subsequent procedure

Clause 43-1 - The claimant in the event of the defendant's failure to reply, or the parties may choose between :

- an exclusively written procedure
- or a hearing with a unique meeting

If the parties do not agree , the procedure will be oral (hearing).

Clause 43-2 - If they choose the witten procedure, the parties may notify each other, when they think it useful, a second statement with the corresponding documents (evidence). A copy should be sent simultaneously to the secretary and , if he has been appointed, to the arbitrator.

The admissibility of the second statement is subject to the respect of a ten days delay, unless consent of the couterpart or arbitrator.

Clause 43-3 - When the procedure is oral the arbitrator may reject all documents that would not have been communicated in due time by a party to the other before the hearing.

The arbitrator

Clause 44-1 - The parties choose an arbitrator registered on an list established by CAREN

In the event either of the defendant's default or of absence of agreement of the parties, the arbitrator is appointed by CAREN.

Clause 44-2 - The date and place of the hearing are fixed by the arbitrator, after he has asked the parties their conveniences.

Clause 44-3 - If need be the arbitrator may in writing question the parties, and fix a delay for their reply.

Clause 44-4 - The arbitrator shall follow and ensure that the parties follow the essentials principles of arbitration, and specially the right of "contradiction" . He can act as amiable compositeur only with the parties' assent.

End of proceedings

Clause 45-1 - The proceedings come to an end on the arbitrator's decision where he states that either

- one of the conditions required in clause 42-1 is not fulfilled
- or the solution of the dispute requires application of the arbitration normal rules.

In such a case the arbitrator informs the parties and CAREN without delay. Immediately the latter takes the necessary steps.

The same arbitrator shall be appointed in the ordinary procedure only with both parties' agreement.

Clause 45-2 - Where the proceedings have been entirely accomplished, the arbitrator gives his award within one month of the closing of the written procedure or of the date of the hearing.

Clause 45-3 - When for any reason, for example the necessity of a technical checking, the delay of one month cannot be respected, the arbitrator informs as soon as possible the parties and CAREN.

Immediately the parties make known their observations, and if necessary the Arbitration Committee decides.

Costs and fees

Clause 46-1 - The costs and fees due to Caren and to the arbitrator are fixed in a special table.

The deposit to be paid by the parties, as said in clause 42 , is half of the amounts.

Clause 46-2 - The parties' personal expenses remain their charge unless otherwise decided by the arbitrator.

Application of the other parts of the Rules

Clause 47 - The provisions of the parts I to VIII apply to a simplified arbitration where they are not contrary to those of the present part IX.

PART X - CONCLUSION

Date of applicability of the Rules

Clause 48 - The clauses 44-1 to 47 are applicable since 1st of July 1996.

The defendant may refuse their application when the contract containing the CAREN compromissory clause has been undersigned before that date.

Clause 49 - These rules (part IX excepted) have come into force on the 1st day of January 1995 and apply to all requests for arbitration registered with the secretariat from that date.

All amendments to these rules approved before registration of a request for arbitration by the secretariat under Clause 2 hereof shall apply to arbitrations registered thereafter.

The arbitrators are responsible for ensuring that their decisions under these rules do not conflict with the substantive law applicable to the arbitration in question.

Supremacy of French version

Clause 50 - These rules are intended to be translated into several languages. In the event of differences of interpretation the French text shall be final.

Appendix - REAM Arbitration

Where a dispute is of an international nature and the necessary conditions are fulfilled, the parties may demand the application of the Rules established by the EIEG Réseau européen d'arbitrage et de médiation (CAREN being a member of that Group).