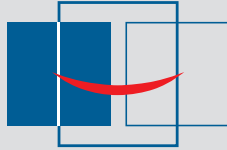


aegi Solutions



CMAP

Manage your disputes successfully
with CMAP

Guide to Mediation and Arbitration

a centre founded by



**Chambre de commerce
et d'industrie de Paris**



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FOREWORD

Conflict management is an important strategic matter for enterprises, which they cannot afford to leave to chance.

Until recently enterprises dealt with their commercial disputes almost exclusively in the national courts, with the risks and restrictions that this entailed, and which often led to unsatisfactory outcomes for business managers.

Any dispute, no matter its nature, weakens an entity and its business relationships. It affects its profitability and performance and, if an outcome is not rapidly reached, it can even affect its future development prospects or continued existence.

Today, an company can decide to resort to an economical and rapid means of resolving disputes, outside of the courthouse, by resorting to “Alternative Dispute Resolution (ADR)” as it is called in common law countries, or “Modes Alternatifs de Règlement des Conflits (MARC)” as it is called in France.

Mediation and arbitration are the two main procedures that are offered by CMAP to settle disputes. This guide is primarily dedicated to these two forms of dispute resolution.

Mediation is an amicable dispute resolution process. It provides a shield of confidentiality and trust, which allows entities to negotiate and explore by themselves a mutually acceptable solution to their dispute. The mediator orchestrates these exchanges, without becoming involved in the substance of the dispute, leaving the parties entirely free to decide the outcome to their dispute.

Arbitration is a contentious and private means of dispute resolution. It enables the establishment of judicial proceedings, identical to those conducted before national courts, in a confidential setting. The arbitrators, who are selected for their competence and their availability, ensure rapid access to justice by means of a flexible process.

The award rendered by a sole arbitrator or an arbitral panel is equivalent to a judgment that is binding on the parties.

These two procedures can be complementary and used in succession (e.g. mediation followed by arbitration if the parties did not reach an amicable settlement; or arbitration, which once started may be suspended to try mediation) or at the same time (simultaneous Med-Arb).



CMAP has also designed other procedures, called “New Solutions”, that are explained in another specific guide. These innovative procedures seek to offer enterprises with tools to prevent litigation from occurring, through the early intervention of skilled and neutral third parties, who are mandated to provide an independent legal evaluation, an amicable technical expert opinion, or to provide rapid decisions. Finally, an online recommendation service allows access to a neutral third party via a secure computer network system.

The purpose of these two guides, which revisit and explain the entire range of rules provided by CMAP, is to allow companies, at any moment, whether from the moment that the symptoms of a conflict first appear or after several years of litigation, to engage in an efficient and customized dispute resolution process, with managed deadlines and costs, using CMAP’s know-how in this field.

CONTRACTUAL MEDIATION



CONTRACTUAL MEDIATION INTRODUCTORY REMARKS

The purpose of this guide is to familiarise company managers and their advisors, lawyers and chartered accountants, as well as legal managers with mediation so that they may appreciate its advantages, understand how it differs from arbitration, and thus more readily have recourse to mediation as a means of resolving their disputes.

CMAP Rules of Mediation contribute to:

- helping companies to learn about and understand mediation;
- creating a climate favourable to mediation by using qualified mediators selected by the Centre who mutually benefit from each other's experience;
- providing companies with a simple and often inexpensive method of reconciling their differences, in an environment conducive to dialogue and guaranteed by professionalism.

As a preliminary observation, it should be recalled that the fundamental difference between mediation and arbitration is that the purpose of mediation is to bring about reconciliation between parties through the intervention of a third party and not to settle the dispute by imposing a binding decision, as is the case of arbitration.

Mediation as put in place by CMAP is an amicable process for the resolution of disputes. Its object is to assist the parties in reaching the optimal negotiated solution or, at least, a solution which is acceptable by all of the parties. In this context, it is necessary to highlight that the mediator is neither judge nor arbitrator but rather a catalyst whose objective is to facilitate negotiation between the parties in order to help them find a solution to their dispute. In principle, (s)he gives an opinion only when unanimously requested to do so.

The agreement reached by the parties at the end of mediation may be the subject of a written settlement agreement if the parties so wish. This has the advantage of rendering the agreement *res judicata*, i.e. conferring upon it, between the parties, similar status and effect to a final court judgement.



CONTRACTUAL MEDIATION INTRODUCTORY REMARKS

Lastly, unless otherwise agreed by the parties beforehand, the failure of the mediation does not automatically result in arbitration. Mediation is not intrinsically linked to arbitration.

The characteristics of CMAP mediation are as follows:

- **The response to a need**

Promoting a mediation process for resolving business disputes responds to a need which is increasingly felt. Parties to a business relationship wish to find, even before a conflict develops, a neutral venue in which to examine and discuss their respective interests, in the presence of a third party. Appropriate solutions, which in many cases could not otherwise have been adopted, allow the parties to continue their business relationship.

- **A very open access**

The Chamber of Commerce and Industry of Paris is committed to promoting recourse to mediation. For this reason, **mediation can be initiated not only upon the joint request of the parties but also in response to a desire expressed by one of the parties, in which case CMAP proposes to the other party that the process be set in motion.** But, by its very nature, mediation cannot, of course, be imposed on the parties.

- **A flexible, rapid and confidential process**

The mediator's task is to assist the parties to seek, with loyalty and due regard for their respective interests, a conciliatory solution to the dispute between them. The mediator may perform his task as he sees fit. Since no particular restrictions are placed on the mediator or the parties with regard to the conduct of the mediation proceedings, the mediator and the parties do not find themselves in a context constrained by formalities. However, **the mediator must complete her/his task within a two-month time limit**, unless an extension is requested by both parties.

Lastly, the confidential nature of the mediation process is clearly highlighted in the Rules: no statement or proposal made before or by the mediator may be subsequently used, notably in arbitral or judicial proceedings.

- **Impartial and qualified mediators**

CMAP Rules of Mediation aim both at respecting the parties' freedom, without which the mediation cannot attain its desired object, and at giving full latitude to the mediator to assist the parties throughout the process. However, it is necessary to recall that the legitimacy of the mediator relies wholly on the confidence placed in her/him by the parties. This is the reason for which

CMAP calls for mediators who are trained in the technicalities of mediation and whose professional competence and negotiation skills are recognised.

- **Mediation costs**

To permit all companies an easy access to this amicable means of dispute resolution, the Paris Chamber of Commerce wants that CMAP guarantees to the companies a manageable cost of its mediation services as part of the Chamber of Commerce's mission of public service.

A distinction is thus made between **disputes involving a sum of more or less than 15.000 euros**. For disputes involving a sum in dispute of less than €15.000, the cost of opening the file as well as the fees of the mediator are fixed, while an hourly rate applies to mediations with an amount in dispute of more than €15.000. This distinction ensures that disputes of lesser financial significance but of otherwise significant importance for companies are dealt with efficiently and inexpensively.

Further, a distinction is made between mediations initiated after the dispute has developed and mediations initiated under a clause set forth in the contract between the parties.

Thus, **in the absence of a mediation clause, the fee for opening the file is met by the party who retains CMAP**. The fees of the mediator are then shared between the parties as agreed between them, the matter of the allocation of costs being one of the issues to be discussed by the mediator and the parties during the course of the mediation. However, **failing agreement between the parties with respect to the costs, the costs remain the responsibility of the party who originally retained CMAP for the mediation**.

In the case of a joint retainer of CMAP, the costs of the mediation are, in principle, shared equally by the parties.



GUIDING PRINCIPLES FOR MEDIATORS

• Role of the Mediator

Article 7 of the Rules of Mediation provides that: “ The mediator helps the parties to find a negotiated outcome to their dispute. (S)he has full discretion as to the methods by which (s)he performs her/his task, subject to obligations of loyalty and respect of the interests of each of the parties. If (s)he considers it useful, (s)he may hear the parties separately, if they have agreed to this. ”

The mediator has no authority other than that arising out of the confidence placed in her/him by the parties.

The mediator is neither a judge nor an arbitrator. His/her role is to seek with the parties a negotiated solution by bringing together their points of view.

The mediator undertakes to respect CMAP Rules of Mediation, in particular with respect to time limits.

• The Mediator and the Parties

As soon as possible after accepting his/her appointment, the mediator contacts the parties to organise his/her mission.

(S)he obtains the agreement of the parties, if (s)he considers it appropriate, to meet separately with them. In such a case, the mediator undertakes to respect the principle of equality between the parties.

The mediator analyses with each party its position with respect to the dispute and makes sure that each party fully understands the position of the other party or parties.

To accomplish this, (s)he may suggest ideas to resolve the issues, but in no circumstances may (s)he attempt to impose any terms of settlement, particularly on a party which is clearly in a weak position. In her/his approach, the mediator must not only be guided by principles of fairness but also take into account the parties' expectations with regard to the agreements entered into by them.



If her/his mission is successful, the mediator invites the parties to formalise their agreement by signing a written settlement agreement. Since the mediator is not a party to that document, (s)he does not sign it.

However, upon the request of the parties, (s)he may affix his/her signature to the settlement agreement to attest to the agreement reached. In such case, her/his signature is preceded by the words “in the presence of X, mediator designated by CMAP.”

- **Secrecy and Confidentiality**

The mediator is bound by a duty of secrecy regarding the dispute entrusted to her/him, both with regard to its existence and to all other aspects of the mediation.

The mediator’s duty of secrecy is general, absolute, and unlimited in time. The mediator may be released from it only under the conditions prescribed by law.

The mediator is prohibited from having any professional relationship with any of the parties during the year following the end of her/his mission.

The mediator’s mission ends when a settlement agreement is signed or when the failure of the mediation is recorded. From that date onward, the mediator cannot intervene in any capacity whatsoever in connection with the dispute or its resolution, except upon the request of all the parties and after giving notice thereof to the General Secretariat of CMAP.



MEDIATION RULES

ARTICLE 1: INITIATION OF MEDIATION PROCEEDINGS

- 1.1 Mediation proceedings are initiated upon the request of the parties, where they have so agreed at the outset of the dispute, or upon the request of one party, where the parties have so agreed under the terms of their contract.
- 1.2 Mediation proceedings may also be initiated :
 - (a) at the request of one party who wishes the Centre to propose mediation proceedings and where the other party is not opposed to it,
 - (b) or, alternatively, where the Centre receives a request for arbitration and considers that mediation may be proposed to the parties, subject to their acceptance of it.
- 1.3 Any mediation which is entrusted to CMAP entails acceptance by the parties of the present Rules.

ARTICLE 2: REQUEST FOR MEDIATION

- 2.1 The Centre is seized with a matter at the request of the parties or one of them, upon receipt of a request for mediation that contains:
 - the legal particulars or company details and the addresses of the parties;
 - a brief description of the nature and circumstances of the dispute; and
 - their respective positions or the position of the party requesting mediation.
- 2.2 The request for mediation is not registered unless it is accompanied by payment of the administrative fees for opening the matter calculated in accordance with the scale of fees in effect, as provided by Article 8 hereof. Under no circumstances is this sum refundable.
- 2.3 Where mediation proceedings are suggested by the Centre of its own initiative (under Article 1 paragraph 2b of CMAP's Mediation Rules and Article 19 of CMAP's Arbitration Rules), the request for arbitration shall serve as request for mediation. It entails payment of the initial fees in accordance with the preceding paragraph, which will be set off against the sum paid at the time of the registration of the arbitration request.



ARTICLE 3: INFORMING THE OTHER PARTY

3.1 Where a mediation clause already exists:

When the Centre is seized by a party who invokes an existing conciliation or mediation clause in the contract subject of the dispute, it shall inform the other party of the initiation of mediation proceedings. The Centre shall send these Rules to the other party and allow it fifteen (15) days from receipt of CMAP's letter to provide its comments.

3.2 In the absence of a mediation clause:

As soon as the request is registered, the Centre shall so inform the other party and invite it to participate in mediation proceedings. It shall send these Rules to the other party and allow it fifteen (15) days from receipt of CMAP's letter to reply to the Centre.

ARTICLE 4: RESPONSE TO THE REQUEST

4.1 Where a mediation clause already exists:

As soon as the comments of the other party have been received, or once the time limit defined in Article 3.1 above has expired, the General Secretariat of the Centre shall submit the case to CMAP's Accreditation and Appointments Committee so that a mediator may be designated.

4.2 In the absence of a mediation clause:

If the other party so agrees, the General Secretariat submits the case to CMAP's Accreditation and Appointments Committee so that a mediator may be designated. If the other party explicitly refuses to participate in mediation proceedings or fails to respond once the time limit defined in Article 3.2 above has expired, the Centre shall so advise the party who submitted the request for mediation and close the file, without refunding the administrative fees paid for opening the matter.

ARTICLE 5: APPOINTMENT OF THE MEDIATOR

5.1 As soon as the parties have agreed to participate in mediation proceedings or when the contract between them contains a clause referring to these Rules, the Accreditation and Appointments Committee shall appoint a mediator, who shall be selected according to the nature of the dispute or, as the case may be, based on a suggestion from the parties.

- 5.2 CMAP may propose to the parties that a trainee mediator attend the mediation sessions. The trainee mediator will then be bound by the same obligation of confidentiality as the appointed mediator.

ARTICLE 6: INDEPENDENCE, NEUTRALITY AND IMPARTIALITY OF THE MEDIATOR

- 6.1 The mediator must be impartial, neutral and independent of the parties. In appropriate cases, (s)he must disclose to the parties and to CMAP's General Secretariat any circumstances which might affect her/his independence and/or impartiality in the eyes of the parties. In such case, (s)he may be confirmed or maintained as mediator only after a decision by the Accreditation and Appointments Committee and with the written consent of all the parties.
- 6.2 The mediator appointed by the Committee shall sign a statement of independence.
- 6.3 Should (s)he come to the view, during the course of the mediation process, that there exists any factor liable to call into question her/his independence, (s)he shall so inform the parties. The mediator shall continue her/his task if the parties so agree in writing. Otherwise (s)he shall stay the mediation proceedings. The Accreditation and Appointments Committee shall then proceed to appoint a replacement mediator.

ARTICLE 7: THE MEDIATOR'S ROLE AND THE CONDUCT OF MEDIATION PROCEEDINGS

- 7.1 The mediator helps the parties to find a negotiated outcome to their dispute. (S)he has full discretion as to the methods by which (s)he performs her/his task, subject to obligations of loyalty and respect of the interests of each of the parties. If (s)he considers it useful, (s)he may hear the parties separately, if they have agreed to this. In this case, (s)he tries to ensure equal balance of treatment between all the parties and the respect of the confidentiality of the procedure (cf. paragraph 4 below).
- 7.2 In the case of contractual mediation, at the beginning of mediation proceedings, the mediator has the parties sign an agreement apportioning the expenses and fees of the mediation between them.



- 7.3 Where a mediation clause exists, if one of the parties refuses to attend a meeting organised by the mediator, an end of mission report is submitted to the Centre by the mediator. Similarly, the mediator also submits a report in the event that the mediation ends without the parties having reached an agreement. CMAP's General Secretariat then closes the file and so informs the parties.
- 7.4 The mediator and the parties are held to the strictest obligation of confidentiality for everything that relates to the mediation: no finding, statement, or proposal made by or before the mediator may be used subsequently, even in court proceedings, except in cases where all parties have formally agreed to this.
- 7.5 The duration of the mediation shall not exceed two months starting from the appointment of the mediator by the Centre. This period may be extended by CMAP or by the judge that ordered the mediation, with the agreement of the mediator and all the parties, the Centre being entitled to terminate the mediation proceedings on the expiry of a period of six months from the date of appointment of the mediator, without refunding the administrative fees.
- 7.6 If it appears to the mediator that the mediation process will not result in an agreement, (s)he may terminate her/his mission. Equally, and at any time, either party is free to bring the mediation proceedings to a close.
- 7.7 Should the mediator consider that (s)he is unable to pursue her/his mission, (s)he shall stay the mediation proceedings. (S)he shall promptly give notice thereof to CMAP's General Secretariat. The CMAP's Accreditation and Appointments Committee shall then proceed to appoint a replacement mediator as soon as possible, if the parties so request.
- 7.8 In the hypothesis provided for at Article 1, paragraph b, the parties may at any time request that the mediation proceedings be terminated and, where appropriate, that arbitration proceedings be started.
- 7.9 The mediator may not be appointed as an arbitrator or participate in any capacity whatsoever in any ongoing proceedings, except upon the written request of all the parties.
- 7.10 The agreement reached as a result of mediation proceedings shall be written up in a document that is signed by the parties.

7.11 In the case of an international dispute, the parties may ask the mediator if (s)he is willing to be appointed by the Centre as an arbitrator in order to deliver an award by consent. If the mediator so agrees, CMAP starts arbitration proceedings. In addition to the fees and expenses due for the mediation, shall be added half of the fees and expenses, in accordance with the minimum fee for the range of the sum in dispute, that would be incurred shall an arbitration be commenced, as defined in the scale appended to the Arbitration Rules in effect at the time proceedings were originally initiated with the Centre. Once any sums due for this arbitration procedure have been paid, the Accreditation and Appointments Committee is requested to validate the appointment of the arbitrator. The award is delivered in accordance with CMAP's Arbitration Rules.

ARTICLE 8: MEDIATION FEES AND EXPENSES

- 8.1 The fees and expenses of the mediation shall be set, as appropriate, in accordance with the fixed or sliding scale annexed to these Rules that are in effect at the date CMAP receives the request for mediation.
- 8.2 During the course of mediation proceedings that are not covered by the fixed scale, the Centre may request an additional upfront advance against final fees and expenses.
- 8.3 In the case of a clause designating CMAP, and unless the parties agree otherwise, the fees and expenses shall be borne equally by the parties. In the absence of a contractual clause designating CMAP and of an agreement on the sharing of mediation costs, the fees and expenses shall be borne by the applicant.
- 8.4 If an arbitration follows, no filing fee for opening the matter, other than the fee already paid in respect of the mediation, is due by the parties.

ARTICLE 9: INTERPRETATION OF RULES - APPLICABLE RULES

- 9.1 CMAP shall have sole jurisdiction to interpret these Rules.
- 9.2 A request for mediation shall be processed in accordance with the Rules and scale of fees and expenses in effect on the date of receipt of the request.

ARBITRATION



ARBITRATION

INTRODUCTORY REMARKS

Promoting recourse to arbitration by all companies by virtue of its flexibility, promoting a procedure which is adapted to the nature of each dispute, these are the objectives that CMAP has set itself.

- **Dynamic Rules**

Flexibility and speed, the advantages of arbitration which led to its development, find full expression in CMAP Rules of Arbitration. From the moment the Centre is retained, and even before the appointment of the arbitral tribunal, CMAP creates an environment which is conducive to dialogue and encourages the parties to reach a negotiated agreement by first proposing that the parties proceed to mediation (article 19 of CMAP Rules of Arbitration).

Furthermore, arbitrators are given a broad discretion to tailor the arbitration to the needs of the disputes submitted to them, by adapting the procedure to the specific issues and difficulties of the case.

Another original feature of CMAP Rules of Arbitration is the rapidity of the proceedings: in addition to short time limits, the arbitrators are constantly encouraged to proceed rapidly. The intentional absence of formalism in the procedure, in particular, permits the preliminary procedures to be hastened.

A fast-track procedure has also been established and proves particularly useful for disputes which do not require complex preliminary inquiries. This procedure can be used either at the request of the parties or, in circumstances where the arbitral tribunal considers it appropriate, in view of the nature of the dispute. One of the main features of the fast-track procedure is that the arbitrator may decide the case within three months, possibly on the sole basis of the documents submitted by the parties, or after a single exchange of pleadings, or after hearing the parties.

At last, the parties may have recourse to the **Established Arbitral Tribunal** of CMAP. Composed of prominent arbitration specialists, coming from varied professional horizons (lawyers, magistrates, law professors, CEOs, etc.), which ensures its plurality of competence, the Established Arbitral Tribunal offers the possibility to hasten the proceedings even more. In particular, the parties **do not waste time appointing the sole arbitrator or the arbitral tribunal in its entirety**, the Established Arbitral Tribunal being ready to proceed immediately at the request of the parties.



- **Rules Suitable for a Wide Range of Disputes**

Because the procedure is relatively simple and rapid and because the pace of the proceedings varies according to the nature or size of the dispute, the Rules have proved suitable for a wide range of cases.

Before the case is referred to the arbitral tribunal, each party remains free to apply to any competent judicial authority for conservation and/or interim measures.

- **High Quality Arbitral Proceedings**

While the rules governing the proceedings are determined by the arbitral tribunal - subject to the agreement of the parties - this freedom is restricted by the obligation to respect the principles inherent in the proper administration of justice and by the provisions of CMAP Arbitration Rules. Thus, for example, in accordance with the right of each party to be heard, which is a principle of public order, each party must be informed of the other party's claims and the documents produced in support thereof.

Nothing, however, prevents the arbitral tribunal from exploring speedy methods of communication, provided the arbitral tribunal ensures that each party is afforded the opportunity to present its case.

CMAP and the Approval and Appointments Committee have an important role to play in overseeing the arbitral proceedings and in ensuring that they progress smoothly.

- **Independent, Impartial and Qualified Arbitrators**

The arbitrator must be independent from the parties. (S)he must be impartial and respectful of the confidentiality of his/her task, both during the arbitration and after the handing down of the award.

CMAP obtains the assistance of arbitrators whose morality and professional qualities are recognised. CMAP arbitrators come from diverse professional backgrounds: practitioners in law, business and finance, former judges, university professors, company managers, engineers, etc.

Moreover, they possess practical and technical knowledge which ensures that they have a perfect understanding of the business sector in which the dispute takes place.

Upon request, names of arbitrators can be communicated to the parties. In all cases, a sole arbitrator or the chairman of an arbitral tribunal is to be appointed by the Approval and Appointments Committee and, where appropriate, the appointment is made upon the proposal of the parties or arbitrators nominated by the parties.

- **Arbitration Costs**

The costs of the arbitration include the arbitrator's fees and the administrative expenses. They are borne by the parties in the proportion indicated in the award. Their amount is fixed according to the scale in force found at page 47.



GUIDING PRINCIPLES FOR ARBITRATORS

Any person likely to be appointed by CMAP, or by one of the parties, is requested to read carefully the following rules, and to sign and return a copy to the Centre.

By signing the rules, a copy of which is to be kept by its signatory, (s)he undertakes to respect and apply, strictly, the rules, which constitute CMAP's arbitration rules.

Each signatory recognises that he has been informed that the violation of any of the provisions of the arbitration rules will result in her/his personal liability and furthermore her/his removal from CMAP's list of arbitrators.

ARTICLE 1 : INDEPENDENCE AND IMPARTIALITY

A CMAP arbitrator shall act as an independent and impartial judge.

- 1/ Before agreeing to be appointed, the prospective arbitrator shall :
 - declare to CMAP any possible past and present relationship with one or several of the parties, their lawyers or the other arbitrators ;
 - reveal, in writing, to CMAP and to all the parties any circumstances which might affect her/his independence or impartiality in the eyes of the parties.
- 2/ The arbitrator shall, furthermore, reveal in writing, to CMAP and to the parties, any of the circumstances referred to in paragraph 1 above that occurs after her/his appointment.
- 3/ As soon as (s)he is aware that (s)he is a prospective, as well as during the proceedings, (s)he undertakes not to enter into any form of relationship with the parties, except for the needs of the arbitration, in which case (s)he will always afford all the parties the opportunity to be heard.
- 4/ When he sits in an arbitral tribunal, the arbitrator who was appointed by one of the parties and whose appointment then received validation by the Accreditation and Appointments Committee, is prohibited from acting as the representative of the said party or considering that (s)he is acting in such capacity.



5/ The arbitrator shall not receive any compensation or benefit from any of the parties or from a person having an interest in the resolution of the dispute, such prohibition, however, to be without prejudice to her/his candidacy for appointment as an arbitrator in a further matter.

ARTICLE 2 : AVAILABILITY

Any arbitrator who accepts to act as an arbitrator on a tribunal where the arbitration rules of CMAP apply, shall carry out her/his mission until the dispute for which (s)he was appointed is finally resolved.

In accepting the mission, the arbitrator commits to respect the arbitration calendar or arbitration proceedings and to render the award on the scheduled date.

He shall undertake, even if acting in the framework of a panel of several arbitrators, to accomplish, in totality, the mission as contemplated personally, the arbitrators having no flexibility to share or delegate their tasks.

ARTICLE 3 : ABILITY

The arbitrator shall accept her/his mission only if her/his abilities are sufficient to enable her/him to perform the task for which her/him is appointed in conformity with the expectations of the parties, and to fully perform and complete her/his mission.

ARTICLE 4 : CONFIDENTIALITY

The arbitrator shall not reveal to anyone neither the existence of the dispute, nor the content of the arbitration proceedings.

Once the award has been rendered, the arbitrator shall respect this same obligation of secrecy and, in the case where (s)he is a member of a tribunal consisting of several arbitrators, (s)he shall respect the absolute secrecy of the deliberations, including with the party who has appointed her/him.



ADHERENCE TO THE RULES

ARTICLE 1: ADHERENCE

The parties shall be bound by the provisions of the current Rules either by signing an arbitration agreement which contains a clause nominating the Centre as the arbitration institution or by voluntary adherence to these Rules, or in cases where the Centre is appointed by a state court.

COMMENCEMENT OF ARBITRAL PROCEEDINGS

ARTICLE 2: REQUEST FOR ARBITRATION

- 2.1 CMAP is seized either by a unilateral request for arbitration, or by a joint request by the parties, which indicates:
- the particulars or business name and address of the claimant(s) and, where appropriate, the name(s) and address(es) of its or their counsel
 - the particulars or business name and address of the defendant(s) and, where appropriate, the name(s) and address(es) of its or their counsel;
 - a brief description of the nature and circumstances of the dispute;
 - the claims and applications; and
 - where both parties have agreed that the dispute is to be referred to three arbitrators, the name of the arbitrator nominated by the claimant(s)
- 2.2 The supporting documents shall be submitted in three or more copies together with a schedule enumerating the documents.
- 2.3 The Request shall not be registered unless it is accompanied by payment of the filing fee as fixed by the scale in force at the time of filing.



- 2.4 A request for arbitration of an international character requires at least one of the parties to be French unless both parties, being of foreign nationality, agree otherwise. The supporting documents to be used in the procedure shall be supplied in their original language, with a French translation if CMAP or the arbitral tribunal so requests, the cost of such translation to be agreed by the parties and with the Centre.

ARTICLE 3: ANSWER TO THE REQUEST

- 3.1 Once the request has been registered, CMAP shall send a copy of the request and the documents annexed thereto to the defendant(s) by registered post accompanied by a request for advice of delivery. This notification shall grant the defendant one month to respond.
- 3.2 The response addressed to the Centre by registered post with advice of delivery must, in cases where three arbitrators will be nominated, indicate the name of the arbitrator chosen by the defendant.
- 3.3 This response shall contain any potential counter-claims and must be accompanied by at least three copies of the documents the defendant intends to produce in reliance upon its claim, with a schedule enumerating the documents relied upon.
- 3.4 When the arbitration has an international character and subject to the provisions of article 2 paragraph 5 of the present Rules, the response shall be made in French, unless the parties agree otherwise, within a time limit of one month, and accompanied by a translation into another language if the Centre or the arbitral tribunal so request. Similarly, throughout the proceedings, the documents relied upon by the defendant must be supplied in their language of origin accompanied by a translation if the Centre or the arbitral tribunal so requests.
- 3.5 Upon receipt of the response, the Centre shall communicate it to the claimant by registered post accompanied by a request for advice of delivery.

ARTICLE 4: FAILURE TO REPLY

After the time limit defined in Article 3, paragraph 1, the General Secretariat of CMAP checks that the notification specified has been received by the defendant and:

1/ in the case of an arbitration clause that does not appoint CMAP, so informs the applicant and closes the file; the administrative expenses are non-refundable.

2/ in the case of an arbitration clause that appoints CMAP as responsible for organising arbitral proceedings, initiates the arbitration procedure in accordance with the provisions outlined below, notifying each step of the procedure to the defaulting party.

ARTICLE 5: JURISDICTION

Should the appointment of the Centre or the jurisdiction of the arbitral tribunal be challenged, before the arbitral tribunal has been formed, the Accreditation and Appointments Committee shall consider *prima facie* whether arbitration proceedings can be initiated.

ARTICLE 6: ASSISTANCE AND REPRESENTATION OF THE PARTIES

6.1 Each party may be assisted by any person of its choice.

6.2 Each party may arrange to be represented at the arbitral proceedings by a person empowered by it for such purpose.

ARTICLE 7: ADVANCE ON COSTS AND TRANSMISSION OF THE FILE TO THE ARBITRAL TRIBUNAL

7.1 As soon as CMAP has received the parties' respective claims and applications, or upon expiry of the time-limit specified in Article 3 paragraph 1 hereof, or in the event of a joint request, CMAP shall request all the parties to pay an equal amount as an advance on fees and expenses calculated in accordance with the scale in force and payable within the time limit fixed by the Centre.



- 7.2 CMAP shall transmit the file to the arbitral tribunal only once the required advances on costs have been paid in full. Should one of the parties fail to pay its share, another party may pay it instead, or, in lieu thereof, post a bank guarantee acceptable to CMAP.
- 7.3 Upon failure to pay the costs, after expiry of the time limit and without an offer from a party to meet the costs of the other party (cf. the preceding paragraph), the Centre shall have the right to consider the arbitral procedure as having lapsed. It shall so inform the parties, the administrative fees remaining non-refundable.
- 7.4 Where the share of the advance owed by the defaulting party is paid by another party, the latter may request that the Accreditation and Appointments Committee revise and fix the total amount of the advance on the basis of its application alone.
- 7.5 In the latter case, the arbitral tribunal is seized only with respect to the application of the party who met the costs of its opponent, after notifying the defaulting party by registered letter with a request for advice of delivery.
- 7.6 The defaulting party can seize the arbitral tribunal with a counter-claim only after having effected payment of the costs payable by it.
- 7.7 If, in the course of the arbitration, additional claims are put forward by the parties, the Accreditation and Appointments Committee may call for an additional advance on costs upon the request of the arbitral tribunal, which payment is subject to the rules provided for in paragraphs 2, 3 and 4 of the current article. Failing payment within the time limit set, the additional claims are considered to have never been made.

MEASURES OF CONSERVATION AND INTERIM MEASURES

ARTICLE 8: MEASURES OF CONSERVATION AND INTERIM MEASURES

After the file has been transmitted to it, the arbitral tribunal shall have jurisdiction to make orders of conservation and interim measures, unless by their nature they should be ordered by another authority.

THE CONSTITUTION OF THE ARBITRAL TRIBUNAL

ARTICLE 9: NUMBER OF ARBITRATORS

Subject to any previous or current agreement of the parties with respect to the number of arbitrators, the Accreditation and Appointments Committee shall decide how many arbitrators will compose the arbitral tribunal. There must always be an uneven number of arbitrators.

ARTICLE 10: APPOINTMENT OF ARBITRATORS

- 10.1 The sole arbitrator or the chairman of the arbitral tribunal, or, in the case of multi-party arbitration, the arbitral tribunal in its entirety, shall be appointed by the Accreditation and Appointments Committee. Where appropriate, the appointment shall be made upon a proposal of the parties or of the arbitrators nominated by the parties. If the arbitration is of an international character, the sole arbitrator or the chairman of the arbitral tribunal shall, unless otherwise agreed by the parties, be of a nationality other than those of the parties and shall be chosen after consulting with the French National Committee of the International Chamber of Commerce.
- 10.2 Where an arbitrator must be proposed by a party, CMAP shall set the said party a time limit for so doing. If the party fails to reply, the appointment shall be made by the Accreditation and Appointments Committee.
- 10.3 All appointments made by the parties shall be subject to confirmation by the Accreditation and Appointments Committee.



ARTICLE 11: ESTABLISHED ARBITRAL TRIBUNAL

- 11.1 The Centre also provides an Established Arbitral Tribunal which is available to parties who wish to resort to it.
- 11.2 The Established Arbitral Tribunal is made up of three appointed arbitrators and three alternate arbitrators. They are appointed by the Accreditation and Appointments Committee for a two year tenure which cannot be renewed without a hiatus. If an arbitrator has already been appointed (s)he will continue the mission to its conclusion even if this means working beyond the appointed two years.
- 11.3 The Established Arbitral Tribunal sits as a college made up of three arbitrators. If one or more of the arbitrators who have tenure is unable to continue or is challenged the Accreditation and Appointments Committee designates a substitute or substitutes from amongst the alternate arbitrators.
- 11.4 The arbitrators of the Established Arbitral Tribunal designate one of their member to act as chairman for each of their proceedings.
- 11.5 With the agreement of the parties, the Established Arbitral Tribunal may be made up of a single arbitrator chosen by the Accreditation and Appointments Committee from amongst the arbitrators who have tenure and alternate arbitrators.
- 11.6 The parties may opt for the Established Arbitral Tribunal when contacting the Centre with a joint request for arbitration.
- 11.7 All the other provisions of the Arbitration Rules that are not inconsistent with this Article apply to proceedings before the Established Arbitral Tribunal.

ARTICLE 12: INDEPENDENCE AND IMPARTIALITY OF ARBITRATORS

- 12.1 The arbitrators shall be independent. They must inform the parties and the Accreditation and Appointments Committee of any circumstances which might affect their independence or their impartiality in the eyes of the parties.

- 12.2 In such case, they may be confirmed or maintained as arbitrators only after a decision by the Accreditation and Appointments Committee, after the opinion of the parties has been taken into consideration.
- 12.3 The arbitrators shall act impartially in the exercise of their functions.

ARTICLE 13: CHALLENGE TO ARBITRATORS

- 13.1 Any party wishing to challenge an arbitrator, for circumstances occurring or coming to light after the arbitrator's appointment, shall immediately and in any case within no more than fifteen (15) days of the occurrence or revelation of the particular circumstances on which the challenge is based, submit a reasoned application to the Accreditation and Appointments Committee. After affording each party the opportunity to be heard, the Accreditation and Appointments Committee shall rule on the application by handing down a decision which does not contain reasons and which shall not be subject to appeal.
- 13.2 The arbitral proceedings shall be suspended during such inquiries.
- 13.3 Once the award has been notified to the General Secretariat, in accordance with Article 24, paragraph 3, no challenge of arbitrators is admissible.

ARTICLE 14: REPLACEMENT OF ARBITRATORS

- 14.1 The arbitrator shall undertake to carry out her/his mission to its completion.
- 14.2 Any arbitrator who is unable to continue or who is removed following a challenge shall be replaced according to the same procedure applying at the time of her/his appointment. The arbitration period shall be suspended from the occurrence or revelation of the event constituting the ground for replacement until the new arbitrator accepts her/his mission.
- 14.3 The arbitral tribunal so constituted shall decide whether and to what extent the arbitral proceedings are to be resumed.



THE ARBITRAL PROCEEDINGS

ARTICLE 15: PLACE AND LANGUAGE OF THE ARBITRATION

- 15.1 Unless otherwise agreed by the parties, the arbitration shall take place in Paris, where the award shall be rendered, but this shall not preclude the arbitral tribunal from gathering at any other location.
- 15.2 In an international arbitration, the language of the arbitration shall be chosen by the parties. By default, the language to be used shall be set by the arbitral tribunal. French or English will be used until another language has been agreed upon.

ARTICLE 16: APPLICABLE RULES

- 16.1 When the arbitral tribunal has been formed, CMAP shall send to each of its members a copy of the parties' claims and applications as well as of the supporting documents.
- 16.2 The arbitral tribunal shall then organise the proceedings in whatever form it sees fit, according to the nature of the case and taking into account any arrangements agreed on by the parties.
- 16.3 The arbitration proceedings are governed by the arrangements agreed between the arbitral tribunal and the parties or, in the absence of such agreement, by the provisions of these Rules. Any points not covered by these arrangements will be governed by French law as defined by the New Code of Civil Procedure.
- 16.4 Unless otherwise agreed by the parties and the arbitral tribunal, the arbitration proceedings shall be confidential and the hearings shall not be not public.

ARTICLE 17: PROCEDURAL ORDERS

The arbitral tribunal, or its chairman if authorised to do so by the other arbitrators, may make orders to determine all procedural issues. Such orders are not liable to appeal.

ARTICLE 18: NOTICES AND WRITTEN SUBMISSIONS

- 18.1 All written statements, files, correspondence, and supporting documents must be communicated simultaneously to all the parties, to their counsel, and to each member of the arbitral tribunal.
- 18.2 All notices shall be validly given if sent to the parties at the address indicated by them or, upon request, to their representatives. Any change of address must be notified to CMAP by registered post accompanied by a request for advice of delivery.
- 18.3 Notices addressed to the members of the arbitral tribunal are to be sent to the CMAP's head office.

SETTLEMENT OF DISPUTES BY AGREEMENT

ARTICLE 19: MEDIATION

- 19.1 A mediation process may be proposed to the parties either by the Centre prior to the appointment of the arbitral tribunal or by the tribunal itself once it has been appointed.
- 19.2 If the parties accept that a mediation should be initiated, it shall be immediately organised according to CMAP Mediation Rules, the arbitration process being merely suspended.
- 19.3 If the mediation does not result in an agreement which settles the dispute, the arbitration proceedings shall be resumed, upon the request of the most diligent party and in conformity with the provisions of the present Rules.



FAST-TRACK PROCEDURE

ARTICLE 20: IMPLEMENTATION OF THE FAST-TRACK ARBITRATION PROCEDURE

- 20.1 A fast-track procedure shall be implemented if one of the parties so requests and the other party consents thereto or if the parties have agreed in advance and, if the arbitral tribunal considers that the nature of the dispute permits it.
- 20.2 The arbitral tribunal shall organise the fast-track procedure and, in particular, shall prescribe the time limits, so as to allow an award to be delivered within three months of the transmission of the file to it by CMAP. If the parties so propose or accept, the arbitral tribunal may decide the case solely on the basis of the documents submitted by the parties, without hearing them.
- 20.3 The reduced time limit for delivery of the award may be extended in exceptional circumstances by the Accreditation and Appointments Committee.

AWARD

ARTICLE 21: TIME LIMITS

- 21.1 The award shall be rendered by the arbitral tribunal as soon as possible, having regard to the nature of the dispute. In all cases, it must be delivered within six months from the date the file was transmitted to the arbitral tribunal by CMAP, in accordance with Article 7, paragraph 2 of these Rules.
- 21.2 This time limit may be extended by the Accreditation and Appointments Committee if it decides that it is necessary to do so or at the request of the parties and of the arbitral tribunal.

ARTICLE 22: RULES APPLYING TO THE MERITS OF THE DISPUTE AND APPEAL

- 22.1 The arbitral tribunal shall decide the dispute in accordance with rules of law, unless the parties have granted to it the power to act as amiable compositeur.
- 22.2 The award may not be appealed except, in the case of internal arbitration, where the parties have agreed otherwise in writing.

ARTICLE 23: PARTIAL OR INTERIM AWARDS

- 23.1 If it considers it appropriate, the arbitral tribunal may make partial or interim awards. Similarly, at the request of one of the parties or on its own motion, the arbitral tribunal may make any order relating to the collection of evidence or the appointment of an expert to investigate technical matters.
- 23.2 The arbitral tribunal may itself carry out any investigations it deems necessary, including where this may require visiting other locations.
- 23.3 It may decide to hear witnesses, experts appointed by the parties, or any other person or persons which one of the parties requests be heard or which it decides to hear of its own initiative.
- 23.4 The arbitral tribunal, when it deems this necessary, may appoint one or more experts, define their mission which must afford each party an opportunity to be heard and receive their report.
- 23.5 Any difficulties arising during the expert proceedings that cannot be settled by the expert or the parties shall be submitted to the arbitral tribunal.
- 23.6 Under all these circumstances, the deadline for delivering the award is postponed to allow for the time required to carry out the measure plus an additional period of two months.



ARTICLE 24: FORM AND CONTENT OF THE AWARDS

- 24.1 All awards shall be given by majority decision of the arbitrators on the arbitral tribunal who shall also state the reasons upon which they are based.
- 24.2 In accordance with the draft award which has been sent to it by the arbitral tribunal, the Accreditation and Appointments Committee shall indicate the amount of the arbitration fees and expenses which shall be charged to the parties in the proportion fixed by the arbitral tribunal in the award.
- 24.3 The award, dated and signed by the arbitrators or, where appropriate, referring to one of the arbitrator's refusal to sign it, shall be transmitted to the General Secretariat of CMAP with one copy for each of the parties plus an original which will be conserved in the Centre's archives.

ARTICLE 25: NOTIFICATION OF AWARDS TO PARTIES

- 25.1 After full payment of the arbitration fees, CMAP shall notify the parties of the award, by registered post accompanied by a request for advice of delivery, and send a copy to their counsels. Certified copies can subsequently be sent by the Centre but only to the parties or their beneficiaries.
- 25.2 If one of the parties fail to pay the outstanding balance of its share of the fees and expenses, another party may pay it instead in order to enable the Centre to notify the award.
- 25.3 The award shall be confidential. However, it may be published with the agreement of all the parties to the proceedings and the arbitral tribunal.

ARTICLE 26: AWARD BY CONSENT

Should the parties reach a settlement agreement during the course of the arbitral proceedings, they can request the arbitral tribunal's consent to record it in an award.

ARTICLE 27: CORRECTION, OMISSION TO RULE AND INTERPRETATION

- 27.1 The arbitral tribunal may, of its own initiative or on the application of a party, correct any material errors or omissions of the award.
- 27.2 If one of the parties so requests, the arbitral tribunal may supplement the award if it has omitted to rule on a claim which came within its jurisdiction or proceed to the interpretation of the award.
- 27.3 Any application to correct a material error or an omission or to interpret shall be addressed to the Centre by registered post accompanied by a request for advice of delivery, which shall refer the application to the arbitral tribunal. However, such applications are admissible only if the arbitral tribunal can be reconvened or the application can be referred to the sole arbitrator and only if they are submitted within one year of service of the sentence on the parties.
- 27.4 If the arbitral tribunal cannot be reconvened or if the application cannot be referred to the sole arbitrator, the Accreditation and Appointments Committee designates, as appropriate, a new tribunal or a new arbitrator, in accordance with the provisions of Article 10 above.
- 27.5 The parties shall have the opportunity to be heard with respect to all of the above procedures.
- 27.6 The arbitral tribunal shall make its ruling within the shortest amount of time possible and the ruling shall state the reasons upon which it is based.

ARTICLE 28: ENFORCEMENT OF THE AWARD

By agreeing to submit to arbitration under these Rules, the parties undertake to execute the award without delay.



APPLICATION OF RULES

ARTICLE 29: INTERPRETATION AND RULES IN FORCE

CMAP alone shall have jurisdiction to interpret these Rules. The arbitration shall be subject to the Rules and the scale in force on the day CMAP is seized of the file.

SCALE OF FEES AND EXPENSES UNDER CMAP RULES OF MEDIATION *

Contractual Mediation**

NATIONAL MEDIATION

Amount in dispute less than €15 000 – Fixed rate

Case Filing expenses (1)	€ 200
Mediator's fees (2)	€ 500

Amount in dispute exceeds €15 000

Case Filing expenses (1)	
- joint initiation of mediation proceedings	€ 200 per party
- individual initiation of mediation proceedings	€ 200 x number of parties
Administrative expenses and Mediator's fees (3) (4) (5)	€ 300 per hour

INTERNATIONAL MEDIATION

Case Filing expenses (1)	
- joint initiation of mediation proceedings	€ 250 per party
- individual initiation of mediation proceedings	€ 250 x number of parties
Administrative expenses and Mediator's fees (3) (4) (5)	€ 400 per hour

Court-annexed Mediation***

Administrative expenses and Mediator's fees	€ 300 per hour
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* Tax-exclusive scale applicable from 14 June 2005.

** A 20% night rate increase will apply as well to mediator's fees and to administrative expenses in case a mediation would last after 9 PM.

*** However, if (s)he deems it appropriate, the magistrate may propose that CMAP applies a fixed rate fee to cover the mediator's fees and administrative expenses.

- (1) The amount of the filing fee will, in any case, be withheld by CMAP: it is not refundable, whether or not mediation proceedings are initiated (cf. Article 4 of the Mediation Rules).
- (2) Payable as soon as mediation proceedings are initiated.
- (3) An amount of € 1200 for national mediation and € 1600 in the framework of international mediation are payable by each party to cover mediator's and other related fees, which expenses will not, in any case, be refundable by CMAP, whatever the duration of the proceedings.
- (4) Other expenses not included: transport, accommodation expenses of mediator, etc.
- (5) The mediator's fees include studying the case, holding mediation meetings and communicating (by phone or by email) with the parties.

SCALE OF FEES AND EXPENSES UNDER CMAP RULES OF ARBITRATION*

 Arbitration costs** shall include a fixed-rate filing fee which shall be deducted from the administrative expenses and arbitrators' fees calculated according to the following scale:

Case Filing fee: € 500

Sum in dispute by slice	CMAP	Fees of one arbitrator***	
	Administrative expenses	Minimum	Maximum
1: Up to € 50 000	€ 500	no minimum	€ 6 000
2: from € 50 001 to € 250 000	€ 2 500	€ 4 000	€ 12 000
3: from € 250 001 to € 500 000	€ 3 500	€ 6 000	€ 18 000
4: from € 500 001 to € 1 000 000	€ 5 000	€ 9 000	€ 25 000
5: from € 1 000 001 to € 5 000 000	€ 9 000	€ 15 000	€ 40 000
6: from € 5 000 001 to € 10 000 000	€ 12 000	€ 20 000	€ 50 000
7: from € 10 000 001 to € 30 000 000	€ 15 000	€ 25 000	€ 60 000
8: from € 30 000 001 to € 50 000 000	€ 20 000	€ 30 000	€ 80 000
9: over € 50 000 001	€ 30 000	€ 35 000	estimate provided on demand

* Tax-exclusive scale applicable from 14 June 2005.

** Should an expert be appointed, the expert's fees shall be in addition to the arbitration costs.

*** Where there are three arbitrators, these figures are to be multiplied by 3 and, unless otherwise directed by the arbitrators, the Accreditation and Appointments Committee shall apportion the total amount of the arbitration fees as follows: 40% for the Chairman of the arbitral Tribunal and 30% for each of the arbitrators.



Upon entering into a contract, the various parties may agree to settle their disputes by means of mediation and/or arbitration under CMAP Rules. The following clauses are proposed (select appropriate option):



Option 1 : **Mediation and Arbitration**

All disputes arising out of or in connection with the validity, interpretation, performance, non-performance or termination of this Contract shall be submitted to the Mediation Rules and, in the event that no settlement is thereby reached, to CMAP (Centre for Mediation and Arbitration of Paris, Paris Chamber of Commerce and Industry) Arbitration Rules to which the parties undertake to adhere.



Option 2 : **Mediation Only**

All disputes arising out of or in connection with the validity, interpretation, performance, non-performance or termination of this Contract shall be submitted to mediation in accordance to CMAP (Centre for Mediation and Arbitration of Paris, Paris Chamber of Commerce and Industry) Mediation Rules to which the parties undertake to adhere.



Option 3 : **Arbitration Only**

All disputes arising out of or in connection with the validity, interpretation, performance, non-performance or termination of this Contract shall be submitted to arbitration under CMAP (Centre for Mediation and Arbitration of Paris, Paris Chamber of Commerce and Industry) Arbitration Rules to which the parties undertake to adhere.

ae*gi*Solutions



CMAP

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with CMAP**

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*the centre that facilitates reaching
common understanding among businesses*

a centre founded by



**Chambre de commerce
et d'industrie de Paris**