

EUROARBITRATION

European Centre for Financial Dispute Resolution

RULES OF ARBITRATION

Section I. Preliminary rules

Article 1 - Scope of application

1. Where the parties to a contract have agreed in writing that any dispute arising from the said contract will be referred to arbitration proceedings in accordance with the Rules of Arbitration of the Centre, such disputes shall be settled in compliance with the provisions of the present Rules and their appendices.

1. When the arbitration clause provides that the parties will have recourse to an expertise or mediation proceeding prior to arbitration, a party may not have recourse to arbitration unless:
 - there has been an express or tacit renunciation of the mediation or expertise proceeding by the other party;
 - there is an agreement between the parties not to undertake mediation or expertise proceeding;
 - the attempt at mediation has failed;
 - the procedure provided by article 23.2 has been applied.

If one of the above mentioned conditions has not been satisfied, the arbitrators can nevertheless reach a decision, but they will take into account all the consequences of non-compliance by one party with the clause providing for expertise or mediation proceedings prior to the arbitration.

Article 2 - Request for arbitration

1. The party initiating arbitration proceedings (the "Claimant") shall notify the Secretariat as well as the other party (the "Respondent") of the request for arbitration (the "Request").

2. A Request must be filed even if mediation or expertise proceedings have already been initiated under the aegis of the Centre.

3. The Request shall include the following pieces of information:
- (a) A demand that the dispute be referred to arbitration;
 - (b) The names and addresses of the parties, including their telephone, facsimile number and e-mail addresses, and those of their counsel, if applicable;
 - (c) A reference to the arbitration clause or to the separate arbitration agreement that is invoked;
 - (d) A reference to the contract or contracts on which the claim is based;
 - (e) A statement of the facts and grounds supporting the claims of the Claimant;
 - (f) An outline of the claim and an estimate of the amount involved, if the claim does not lead to the payment of a determined amount;
 - (g) Any relevant indication regarding the number of arbitrators (i.e. one or three) and, as the case may be, a request to resort to the permanent Arbitral Tribunal;
 - (h) The name and particulars of the arbitrator appointed by the Claimant in the event that parties have agreed to appoint the arbitrators by themselves;
 - (i) The opinion of the Claimant concerning the application of the accelerated procedure set forth in articles 22 and 23;
 - (j) The payment of the amount of the fixed fee stated in article 31.

The Claimant may attach to his Request any document that he considers relevant or refer to other documents or pieces of evidence that he will produce.

Article 3 - Registration of the Request

1. The Request is registered by the Secretariat upon due payment of the fixed fee by the Claimant. The Secretariat shall then notify the other party or parties of the Request as soon as possible, including a copy any documents enclosed with the Request and the present Rules of Arbitration.
2. The arbitration proceedings will be deemed to commence from the date on which the Request for Arbitration is registered by the Centre, subject to the provisions of articles 10 and 23.6 regarding the referral of the case to the Arbitral Tribunal.

Article 4 - Answer to the Request

Within thirty days following the receipt of the Request, the Respondent shall communicate his answer to the Request (hereinafter called the "Answer") in writing to the Secretariat and to the Claimant.

The Respondent shall provide the information required in Article 2.3 and submit his defence (notably any objections as to the jurisdiction of the Arbitral Tribunal) and any counterclaim. The Respondent may attach to his Answer all documents supporting his defence or reference other documents or pieces of evidence that he will produce.

3. In his Answer, or at a later stage in the arbitral proceedings, if the Arbitral Tribunal decides that the delay is justified under the circumstances, the Respondent may bring a counterclaim.

Article 5 - Representation and assistance

The parties may be represented or assisted by a counsel of their choice. Any person empowered to represent a party should provide proof of a power of attorney.

SECTION II. The Arbitral Tribunal

Article 6 - Permanent Arbitral Tribunal

The permanent Arbitral Tribunal is composed of three arbitrators, including one president, as well as three alternates appointed by the Permanent Committee.

The permanent Arbitral Tribunal is a collegiate body and is composed of three regular arbitrators, or alternates should one or more regular arbitrators be unable to attend. However, where there has been an agreement between the parties regarding the appointment of a sole arbitrator, or where the accelerated procedure provided in articles 22 and 23 is applied, it shall be composed of a sole arbitrator who shall be either the president of the permanent Arbitral Tribunal or a member of the said tribunal designated by him.

The parties may agree to refer any existing or future disputes to the permanent Arbitral Tribunal. Where there is no such prior agreement, the Claimant can specify in his Request that he wishes to refer the dispute to the permanent Arbitral Tribunal. In the absence of a refusal by the Respondent in his Answer, the Request and the Answer shall constitute the agreement between the parties to refer their dispute to the permanent Arbitral Tribunal.

Where the parties have not agreed to submit their dispute to the permanent Arbitral Tribunal as referred to in the preceding paragraph, the Arbitral Tribunal will be constituted in accordance with article 7.

Article 7 - Constitution of an Arbitral Tribunal

The parties shall be free to decide whether the Arbitral Tribunal will consist of a sole arbitrator, or three arbitrators. Where the parties have not agreed otherwise, a sole arbitrator shall be appointed by the Permanent Committee, unless the complexity and the importance of the dispute justify the appointment of three arbitrators. The three arbitrators will be appointed by the Permanent Committee unless the parties have agreed to appoint the arbitrators by themselves.

If the parties agree that three arbitrators are to be appointed by themselves, each party shall appoint one. The third arbitrator, who will act as president of the Arbitral Tribunal, shall be appointed by the two arbitrators already appointed within fifteen days following the appointment of the second arbitrator. If the third arbitrator is not appointed within the given period of time, he shall be appointed by the Permanent Committee.

If, within thirty days following receipt of the notification of the name of the arbitrator appointed by one of the parties, the other party has not notified the first party of the name of the arbitrator of its choice, the Permanent Committee may appoint the second arbitrator.

The arbitrators are chosen from a list established by the Centre. On duly justified grounds, the parties may appoint an arbitrator from outside such list subject to the Permanent Committee's approval. The Permanent Committee may also appoint an arbitrator from outside of such list.

Where there are more than two parties to the arbitration proceedings, the sole arbitrators or the members of the Arbitral Tribunal are all appointed by the Permanent Committee.

Each prospective arbitrator is requested to send to the Secretariat a declaration stating that he will abide by the present Rules and confirming his independence with regard to the parties. The arbitrator shall state in this declaration any circumstances likely to give rise to doubts in the eyes of the parties as to his impartiality or independence. Under such circumstances, his appointment may be maintained only with the approval of all the parties and that of the Permanent Committee.

Article 8 - Challenge procedure

Any arbitrator may be challenged if circumstances exist of a nature that would give rise to doubts in the eyes of the parties as to his impartiality or independence.

Any party wishing to challenge an arbitrator must notify the Secretariat of such challenge within fifteen days following the date on which it was notified of the appointment of the arbitrator, or, if this date is later, within fifteen days following the date on which said party became aware of circumstances of a nature that would give rise to doubts in the eyes of the parties as to the impartiality or independence of the arbitrator.

Notice of the challenge shall be provided to the other party and to the challenged arbitrator, who will send their answers and comments to the Secretariat within eight days following the above-mentioned notification.

The challenge procedure is a written procedure. The decision concerning the challenge is made by the Permanent Committee and is final. If the challenge is upheld, the arbitrator will be replaced.

Article 9 - Replacement of an arbitrator

1. In the event of death, resignation or challenge of an arbitrator, or in the event of the *de jure* or *de facto* impossibility for an arbitrator to perform his mission, the proceedings shall be suspended until a substitute arbitrator is appointed or chosen, following the procedures that led to the appointment of the arbitrator who is being replaced. Where a member of the permanent Arbitral Tribunal is concerned, he will be replaced by another member of the said tribunal or by a replacement designated by the Permanent Committee.
2. When an arbitrator has been replaced, he shall rehear the parties, their counsel, and witnesses, if any, who have already been heard in the course of the proceedings, unless the statements and arguments that already took place were recorded pursuant to minutes or otherwise under conditions ensuring their integrity. Decisions already rendered in the context of the arbitration will not be reconsidered.

Article 10 - Submission to the Arbitral Tribunal

As soon as the Arbitral Tribunal is constituted, the Secretariat shall request that each party deposit a sum covering the costs and fees as referred to in article 31.

2. The case is submitted to the Arbitral Tribunal, once constituted, upon payment of the advance on the arbitration costs and fees.
3. During the course of the arbitration proceedings, the Secretariat may request that the parties deposit additional amounts.
4. If the required amounts are not paid in full, the Secretariat shall so inform the parties, so that any of them may make the required payment instead of the party who failed to do so. If such payment is not made, all principal claims and counterclaims shall become void, and the Centre and the Arbitral Tribunal shall be discharged.
5. When one or several counterclaims are made, the Permanent Committee may, at the request of one party, fix separate deposits for the principal claim and the counterclaims, each party being required to pay the deposit relating to its respective claims.
6. In the event of separate deposits, the claim or counterclaim corresponding to the unpaid deposit shall be deemed withdrawn.

Section III. Arbitral Proceedings

Article 11 - General principles

The Arbitral Tribunal may conduct the arbitration proceeding in such a manner as it deems appropriate. It must always respect and ensure compliance with the principles of equality of the parties, right to a fair hearing, and right to present a defence.

Article 12 - Location of the Arbitration

The place of Arbitration shall be chosen by the parties. Failing an agreement between the parties, the place of Arbitration will be Paris.

The Arbitral Tribunal may, nevertheless, meet at any place it deems appropriate to hold hearings or deliberations.

Article 13 - Language

1. Unless otherwise agreed by the parties, the language of the proceedings and of the award or awards to be issued, will be the language of the contract. Where versions of the contract are submitted in more than one language, the Arbitral Tribunal may choose the most appropriate language for the proceeding. If the circumstances of the case so require, the Arbitral Tribunal may select an additional language that may be used during the hearings.
2. The Arbitral Tribunal may order that any documents submitted in the course of the proceedings in their original language be accompanied by a translation into the language or languages of the proceedings.

Article 14 - Challenge to the jurisdiction of the Arbitral Tribunal

1. The Arbitral Tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or the validity of the arbitration agreement.
2. A plea of lack of jurisdiction shall be raised *in limine litis*: no later than in the Answer by the Respondent or, in the case of a counterclaim, in the reply to the said counterclaim by the Claimant.

Article 15 - Time limits

1. The duration of the arbitral proceedings is six months from the date on which the last appointed arbitrator has accepted his mission, except where an extension of time is granted by the Permanent Committee, either at its own initiative or at the request of

the Arbitral Tribunal or a party. This time limit will be suspended during any expertise proceeding ordered by the Arbitral Tribunal.

2. The time limits for the communication of written statements and the holding of the hearings shall be fixed by the Arbitral Tribunal. In any event, the Arbitral Tribunal, once constituted, shall be entitled to take all measures that it shall deem appropriate to accelerate the proceedings.

Article 16 - Evidence

The Arbitral Tribunal shall judge the admissibility, relevance and importance of the evidence submitted. The Arbitral Tribunal may require that the parties produce additional evidence within a specified period of time.

The Arbitral Tribunal may, if it deems useful, hold oral proceedings to hear witnesses or experts.

If witnesses are to be heard, each party shall communicate to the Arbitral Tribunal and to the other party, at least fifteen days before the hearing, the names and addresses of the witnesses they intend to present, and they shall specify the subject of the testimony, the pieces of evidence to which the witnesses will refer, and the language that will be used. The Arbitral Tribunal is free to determine the manner in which the witnesses are to be heard. The Arbitral Tribunal may require the witnesses to retire during the testimony of other witnesses.

The Arbitral Tribunal may also accept evidence presented in the form of written statements signed by witnesses.

Article 17 - Hearings

1. The Arbitral Tribunal shall give the parties adequate prior notice of the date, time and place of the hearings.
2. If one of the parties, although duly summoned, does not attend a hearing without good reason, the Arbitral Tribunal may nevertheless decide to hold the hearing.
3. Arbitral Tribunal shall make arrangements for the translation of oral statements made at the hearing and for the transcription of minutes of the hearing, if either measure is deemed necessary by the Arbitral Tribunal under the circumstances.
4. Hearings shall be closed unless the parties agree otherwise. The Arbitral Tribunal may take any measure to ensure the secrecy of the proceedings and of all confidential information.

Article 18 - Interim or protective measures

1. At the request of either party, the Arbitral Tribunal may take any protective and/or interim measures it deems appropriate. It may decide that such measures shall be subject to appropriate security being provided by the requesting party. Such measures may be in the form of a preliminary award.
2. If the Arbitral Tribunal has not yet been formed, the Permanent Committee may, at the request of a party, appoint a sole arbitrator without delay. Such arbitrator shall be charged with summoning the parties at once and taking immediately enforceable action, without prejudice to the decision that will ultimately be made on the merits of the case. The sole arbitrator, after having heard the parties, shall decide on the measures that he considers necessary based upon the emergency situation at issue. In such an instance, the ability of the arbitrator to hear the case shall not be subject to prior payment of the deposit covering the costs and fees of the arbitration. The deposit, which may be made by any party undertaking to do so, must be made before communication of the arbitrator's decision to the Secretariat. Any decision communicated shall not be considered effective by the Secretariat until after payment of the deposit.

The arbitrator shall be relieved of his duties once he has rendered his award.

3. Before a Request has been duly submitted to and registered by the Centre, application by either party to a competent judicial authority for interim or protective measures shall not be deemed to be incompatible with, or a waiver of, the arbitration agreement.

Article 19 - Experts

1. The Arbitral Tribunal may appoint one or more experts, preferably chosen from the list established by the Centre, in order to solve one or more technical problems. The mission of the expert is determined by the Arbitral Tribunal. The Expertise Rules drawn up by the Centre shall apply to the expertise proceeding, subject to modifications made by the Arbitral Tribunal.
2. Any difficulty regarding the expertise proceeding that is not solved by the expert and the parties shall be referred to the Arbitral Tribunal.
3. Upon receipt of the expert's report, the Secretariat shall communicate a copy of the said report to the parties, who shall return any comments within the time allocated to them. The Arbitral Tribunal may decide to hear the expert after receipt of his report.
4. Either party may present to the Arbitral Tribunal an expert witness of its choice, appointed by it and at its own expense.

Article 20 - Closing of the proceedings

1. The Arbitral Tribunal shall set the date of the closing of the hearing. Thereafter, no further evidence may be produced or claims made.

2. If the Arbitral Tribunal deems necessary as a result of exceptional circumstances, either of its own initiative or upon application by a party, it may decide to reopen the hearings at any time before the award is made.

Article 21 - Right to object

A party that feels a provision or requirement of the present Rules has not been complied with must promptly state any objections, failing which, such party shall be deemed to have waived its right to make any such objections.

Section IV. Accelerated Procedure

Article 22 – Conditions for application

1. When the Request shows that the amount of the dispute is lower than the figure set by the Permanent Committee and indicated in appendix II, the arbitration shall be conducted according to an accelerated procedure, unless otherwise decided by the parties. If the Answer shows that the amount of the dispute is above this amount, the Permanent Committee shall decide whether the accelerated procedure should still apply.
2. When the amount of the dispute exceeds the aforementioned figure, the parties may nevertheless decide that the arbitration proceedings will be conducted in accordance with the accelerated procedure.
3. In case of justified emergency, a party may request that the Permanent Committee apply the accelerated procedure.

Article 23 – Mode of application

Upon application of the accelerated procedure referenced in Article 22, the specific procedures below shall be used. The provisions of the present Rules of Arbitration, which are not modified by these specific provisions, shall remain applicable.

When the arbitration agreement provides that the parties will have prior recourse to mediation, the Claimant must specify in the Request that he does not intend to initiate mediation proceedings.

3. Notwithstanding the provisions of Article 7, the Arbitral Tribunal will be composed of a sole arbitrator. If the arbitration agreement provides that the Arbitral Tribunal will be composed of three arbitrators, the Secretariat shall ask the parties to waive this provision and to agree to the appointment of a sole arbitrator. Unless a party objects and so notifies the Secretariat within eight days from the receipt of the proposal, the Arbitral Tribunal shall be composed of a sole arbitrator, designated by the Permanent Committee (except where Article 6.2 is applicable). Where one party notifies the

Secretariat of his refusal to accept the appointment of a sole arbitrator, the Arbitral Tribunal shall be constituted in accordance with the arbitration agreement.

4. The Permanent Committee shall appoint the sole arbitrator or shall ensure the complete formation of the Arbitral Tribunal as soon as possible.
5. Without limiting the provisions set forth in Article 2.3, the Request must include a copy of the contract or contracts on which the claim is based and, as the case may be, other documents establishing the existence of the arbitration agreement, as well as written evidence establishing the facts invoked by the Claimant.
6. In the case provided for by Article 22.1 and notwithstanding the provisions of Article 10, the Arbitral Tribunal shall be deemed to be charged with the proceedings upon due payment by the Claimant of the fixed fee referred to in Article 31.
7. Notwithstanding the provisions of Article 4, the time limit for the Answer is fifteen days from the receipt of the Request. The Answer shall be accompanied by any documents establishing the facts invoked by the Respondent and must contain any counterclaim.
8. The Arbitral Tribunal rules on the basis of written evidence unless otherwise agreed by the parties. It may, nevertheless, decide at any moment to hear the parties or any witness or to appoint any expert, preferably chosen from the list of experts established by the Permanent Committee.
9. Upon formation of the Arbitral Tribunal, each party may submit only one brief (not including the Request and the Answer) relating to the claims brought against it, unless otherwise authorised by the said Tribunal, and it must on this occasion submit all evidence on which it intends to rely.
10. The time limit for the submission of written evidence shall not exceed thirty days. The Arbitral Tribunal may nevertheless grant an extension if it deems necessary.
11. Unless the Tribunal rules on the basis of written evidence, or if the circumstances demand otherwise, the Arbitral Tribunal will hold a single hearing to hear the parties, witnesses, experts and arguments.
12. The award shall be made within a maximum of three months following the submission of the dispute to the arbitrators, unless an extension is granted by the Permanent Committee upon justified request of the Arbitral Tribunal.

Section V. The Award

Article 24 - Decisions

1. When there are three arbitrators, any decision of the Arbitral Tribunal shall be made by a majority vote. If there is no majority, the decision of the President of the Arbitral Tribunal shall prevail.
2. Regarding procedural matters, the Arbitral Tribunal may issue its decisions in the form of orders, and when it is composed of three arbitrators, the Tribunal may authorise the President to issue such orders.

Article 25 - Form and effect of the award

1. In addition to making a final award, the Arbitral Tribunal shall be entitled to make not only definitive awards, but also interim, preliminary, interlocutory, or partial awards.
2. After deliberating, the Arbitral Tribunal shall state the reasons upon which the award is based.
3. The award shall be made in writing and is final. The award is subject to appeal before neither an arbitral nor a judicial authority.
4. The award shall be signed by the arbitrators and it shall specify the date and place where the award was made. Where there are three arbitrators and one of them does not want to sign, it shall be so noted. The strict confidentiality of the deliberations demands that no arbitrator shall be allowed to disclose a dissenting opinion, including in later proceedings relating to the cancellation or enforcement of the award.
5. The award signed by the arbitrators shall be communicated by the Secretariat to the parties, who shall take responsibility for any registration of the award or any other subsequent formality in order to ensure its enforcement.

Article 26 - Applicable law, application of the principles of equity

1. The Arbitral Tribunal shall apply the rules of law designated by the parties to the merits of the dispute. In the absence of any such agreement, the Arbitral Tribunal shall apply the rules of law that it determines to be appropriate.
2. The Arbitral Tribunal shall make a decision based on the principles of equity (*ex aequo et bono*) only if the parties have expressly authorised the Arbitral Tribunal to do so.
3. In all cases, the Arbitral Tribunal shall rule in accordance with the terms of the contract and shall take into account trade and professional customs.

Article 27 - Interpretation of the award

1. Within ninety days following receipt of the award, either party, upon notice to the other party, may request to the Secretariat that the Arbitral Tribunal give an interpretation of the award on a specific issue.
2. The interpretation, if any, shall be given in writing within sixty days following receipt of the request. The interpretation shall constitute an integral part of the award.

Article 28 - Correction of a material error

1. Within sixty days following receipt of the award, either party, upon notice to the other party, may request to the Secretariat that the Arbitral Tribunal correct in the award any computational, clerical or typographical errors, or any errors of a similar nature. The Arbitral Tribunal may, within thirty days following the communication of the award to the parties, make such corrections of its own initiative.
2. Such corrections shall be in writing.

Article 29 - Incomplete ruling

1. Within sixty days following receipt of the award, either party, upon notice to the other party, may request of the Secretariat that the Arbitral Tribunal make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
2. If the Arbitral Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days following receipt of the request, after having given the opportunity to each party to comment, at least in writing.

Article 30 - Confidentiality

1. Upon registration of the Request by the Permanent Committee, any work product or communications regarding the arbitration proceedings are considered strictly confidential, including any correspondence sent and received by the Secretariat.
2. Any individual participating, in any capacity whatsoever, in the arbitration proceedings must respect such confidentiality.
3. The award is strictly confidential, the parties may only disclose it for the strict purposes of its enforcement.

Article 31 - Arbitration costs and fees

1. Any request for arbitration must include a fixed fee covering all administrative charges of the Centre, as fixed by the Permanent Committee in the scale attached. This sum is non-refundable.
2. The Permanent Committee shall fix the arbitration costs and fees, taking into account the information received from the Arbitral Tribunal and the Secretariat regarding the complexity of the dispute and the work performed. The Secretariat shall indicate to the Arbitral Tribunal the amount of the fees and costs to be included in the award. The Arbitral Tribunal shall refer to this amount in the award and shall determine its allocation between the parties.
3. The term “costs and fees” includes only:
 - (a) The fees of the members of the Arbitral Tribunal as set forth in the attached scale;
 - (b) The travel and other expenses incurred by the arbitrators;
 - (c) The costs of any expertise proceeding and of other measure required by the Arbitral Tribunal;
 - (d) The travel and other expenses of witnesses, to the extent approved by the Arbitral Tribunal;
 - (e) The costs for translation and records of hearings as well as all other costs related to the holding of the hearings;
 - (f) The administrative costs of the Centre.
4. Notwithstanding the decision of the arbitrators with respect to the apportionment between the parties of such costs and fees, the parties will be jointly and severally liable for the payment of such costs and fees with regard to the Centre.
5. The Arbitral Tribunal may rule upon the allocation of the costs incurred by the parties for their legal representation and assistance, in the event that such costs have been claimed in the arbitration proceedings, and to the extent that the Arbitral Tribunal judges the amount to be reasonable.

Article 32 - Notices - Deadlines

1. The Request, the Answer and the award shall be delivered against receipt or sent by certified letter with acknowledgement of receipt. Other communications may be delivered by facsimile, regular mail or any other method provided that the sender uses every means to ensure receipt. For purposes of all communications during the course of the proceedings, the address of the recipient shall be that which was communicated by such party, or if none, that which was communicated by the other party.
2. A notice or communication is considered to have been effected when it is received or when it ought to have been received by the recipient or by its representative.

3. Time limits fixed by these Rules shall begin to run the day after receipt of the relevant notice or communication as aforementioned. Holidays and non-business days shall be included in the calculation of time limits. When the date of receipt of a notice or communication is a holiday or a non-business day in the country of the recipient, the time limit shall begin to run on the next business day. When a deadline falls on a holiday or a non-business day in the country of the party bound thereby, the relevant time limit shall expire at the next of the business day.

Article 33 - Applicable Rules

When the parties have agreed to submit a dispute to arbitration under the provisions of the Rules of Arbitration of the Centre, they shall be deemed to have submitted to the Rules and their appendixes as in effect on the date of registration of the Request by the Secretariat. The present Rules of Arbitration shall become effective on November 15, 2000.