

## **SECTION IV**

## **MEDIATION**



## **Standard mediation clause**

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

### **- English**

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

The following provisions may be added to this clause:

*"the seat of the mediation shall be (town or city)"*  
*"the proceedings shall be conducted in the (...) language"*  
*"should the mediation fail, the dispute shall be finally settled under the CEPANI Rules of Arbitration by one or more arbitrators appointed in accordance with those Rules"*

### **- French**

*"Les parties s'engagent à faire application, pour tous différends découlant du présent contrat ou en relation avec celui-ci, du règlement de médiation du CEPANI"*

Cette clause peut être complétée par les dispositions suivantes:

*"le siège de la médiation sera (ville)"*  
*"la langue de la procédure sera le (...)"*  
*"en cas d'échec de la procédure de médiation, le différend sera définitivement tranché suivant le règlement d'arbitrage du CEPANI par un ou plusieurs arbitres nommés conformément à ce règlement"*

### **- Dutch**

*"De partijen verbinden zich ertoe voor alle geschillen die uit of met betrekking tot deze overeenkomst mochten ontstaan, het mediatierglement van CEPINA toe te passen"*

Dit type beding kan worden aangevuld met de volgende bepalingen:

*"de zetel van de mediatie is (stad)."*  
*"de taal van de mediatie is (...)"*

*"indien de mediatie niet lukt, zal het geschil definitief beslecht worden volgens het arbitragereglement van CEPINA, door één of meer arbiters die conform dit reglement zijn benoemd"*

- **German**

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

Diese Klausel kann noch durch die folgenden Bestimmungen ergänzt werden:

*"der Sitz des Verfahrens ist (Stadt)"*

*"die Verfahrenssprache ist (...)"*

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

## **SECTION IV MEDIATION**

### **PRELIMINARY PROVISIONS**

#### **Article 1      Scope**

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

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

#### **Article 2      Confidentiality**

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

### **COMMENCEMENT OF THE PROCEEDINGS**

#### **Article 3      Request for mediation**

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

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

- a) name, first name and the name in full, description, address, telephone and fax numbers, e-mail addresses and VAT-number, if any, of each of the parties;
- b) a recital of the nature and circumstances of the dispute giving rise to the claim;
- c) a statement of the relief sought, a summary of the grounds for the claim, and, if possible, a financial estimate of the amount of the claim;
- d) any comments as to the seat of the mediation, the language of the mediation and the applicable rules of law.
- e) The proof of payment of the registration costs as determined under article 2 of annex I.II.

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

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

#### **Article 4 Answer to the Request for Mediation**

1. If the request is complete following article 3 the Secretariat shall inform Respondent of the Request for Mediation as soon as possible, and grant him a period of fifteen days to accept or reject the Request to take part in the attempt to mediate.
2. If no positive answer is given within that the said time limit, the Request for Mediation shall be considered void. The Secretariat shall immediately inform Claimant accordingly.

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

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

#### **Article 5 Effect of the mediation agreement**

When the parties agree to resort to CEPANI for mediation, they thereby submit to the Rules, including the annexes, in effect on the date of commencement of the mediation proceedings, unless they have agreed to submit to the Rules in effect on the date of their mediation agreement.

#### **Article 6      Written notifications or communications and time limits**

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

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

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

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

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

### **THE MEDIATOR**

#### **Article 7      General provisions**

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

#### **Article 8 Appointment of the mediator**

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

#### **Article 9 Replacement of the mediator**

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

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

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

## **THE MEDIATION**

### **Article 10    Transmission of the file to the mediator**

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

### **Article 11    Language of the mediation**

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

### **Article 12    Seat of the mediation**

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

### **Article 13    Examination of the case**

1. The mediator is free to organize the mediation as he sees fit.

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

## **SETTLEMENT AND END OF THE MEDIATION**

### **Article 14 Settlement**

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

### **Article 15 End of the mediation**

1. When an agreement is reached, the mediation shall end when the parties and the mediator sign the minutes stating that an agreement has been reached.
2. If no agreement is reached, the mediation shall end as soon as the mediator notifies to the Secretariat the minutes stating that no agreement has been reached.

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

## **MEDIATION COSTS**

### **Article 16 Nature and amount of the mediation costs**

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

### **Article 17 Advance on mediation costs**

1. The advance required to cover the mediation costs, as determined in accordance with Article 16, paragraph 1, shall be paid to CEPANI prior to the appointment or the approval of the nomination of the mediator by the Appointments Committee or the Chairman.
2. Further advance payments may be required if and when any adjustments are made to the mediation costs in the course of the proceedings.
3. The advance on mediation costs, as well as the additional advance on mediation costs, shall be payable in equal shares by Claimant and Respondent. However, any party shall be free to pay the whole of the advance on mediation costs should the other party fail to pay its share.
4. When the advance on mediation costs exceeds € 50.000,00 a bank guarantee may be posted to cover such payment.
5. When a request for an additional advance on mediation costs has not been complied with, and after consultation with the mediator, the Secretariat may direct the mediator to suspend his work and set a time limit, which must be not less than fifteen days, on the expiry of which the relevant claims or counterclaims on the basis of which the additional advance was calculated shall be considered as withdrawn. A party shall not be prevented on the ground of such a withdrawal from reintroducing the same claim or counterclaim at a later date in another proceeding.

#### **Article 18    Decision on mediation costs**

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