

# ARBITRATION RULES

## 1. SUBMISSION TO THE PRESENT RULES

- 1.1. Parties wishing to submit, upon execution of an arbitration agreement, any disputes to the Ciesp/Fiesp Chamber of Conciliation, Mediation and Arbitration, hereinafter referred to as Chamber, hereby accept and become bound by the present Rules and the Chamber's Internal Regulation.
- 1.2. Any change in the provisions hereunder, as agreed between the parties, shall only be valid for the specific case.
- 1.3. The Chamber does not resolve disputes itself. It administers the development of arbitral proceedings by nominating and appointing arbitrator(s), unless otherwise agreed between the parties.
- 1.4. These Rules shall apply whenever the arbitration agreement determines submission to the arbitration rules set out by the Ciesp/Fiesp Chamber of Conciliation, Mediation and Arbitration, Ciesp/Fiesp Chamber of Conciliation, Mediation and Arbitration of São Paulo, the São Paulo Chamber of Mediation and Arbitration, the Fiesp Chamber of Arbitration, or whenever it refers to any Chamber of Arbitration belonging to any of Ciesp and Fiesp entities.

## 2. PRELIMINARY ACTIONS

- 2.1. The arbitral proceedings shall be initiated upon request by the interested party, which shall, from the outset, mention the arbitration agreement stating the reference of the matter to arbitration administered by the Chamber, the subject matter of the arbitration, the amount of the dispute, the name and full identification of the other party(ies), attaching a copy of the contract and any other documents relevant to the dispute.

- 2.2. The Secretariat of the Chamber shall send a copy of the request to the other party(ies), inviting them to nominate an arbitrator within fifteen (15) days, in accordance with the arbitration agreement, and shall send its List of Arbitrators, in addition to a copy of these Rules and of the Code of Ethics. The opposing party(ies) shall have an identical time limit to nominate an arbitrator.
- 2.3. The Secretariat of the Chamber shall inform the parties about the nomination of an arbitrator by the opposing party and shall request the submission of this arbitrator's résumé, except if he/she is a member of the List of Arbitrators.
- 2.4. The president of the Arbitral Tribunal shall be elected by mutual agreement of the arbitrators nominated by the parties, preferably from among the members of the Chamber's List of Arbitrators. The names shall be subject to approval of the President of the Chamber. The approved arbitrators shall be notified to express their acceptance and to execute the Statement of Independence, whereupon the arbitral proceedings are deemed to have commenced. The Secretariat, within ten (10) days from receipt of the arbitrators' confirmation, shall notify the parties to draft the Terms of Reference.
- 2.5. Should either party fail to nominate an arbitrator within the time limit provided in item 2.2, the President of the Chamber shall make the appointment. In the absence of such nomination, the President of the Chamber shall also appoint, preferably from among the members of the Chamber's List of Arbitrators, the arbitrator who shall act as President of the Arbitral Tribunal.
- 2.6. The Arbitral Tribunal shall be composed of three (3) arbitrators, and the parties may agree that the dispute shall be settled by a sole arbitrator, nominated by them, within fifteen (15) days. If no nomination is made within said time period, the arbitrator shall be designated by the President of the Chamber, preferably from among the members of the List of Arbitrators.

2.7. The commencement of an arbitration to be resolved by a sole arbitrator shall follow the same procedure described in these Rules for arbitrations with three arbitrators (Arbitral Tribunal).

### **3. MULTIPLE PARTIES ARBITRATION**

3.1. Where there are multiple parties as claimants or respondents (multiple parties arbitrations), the multiple claimants, jointly, or the multiple respondents, jointly, shall mutually agree to nominate an arbitrator, in accordance with items 2.1 to 2.5. If the parties fail to agree, the President of the Chamber shall appoint all the arbitrators to constitute the Arbitral Tribunal.

### **4. PRIMA FACIE DECISION**

4.1. The President of the Chamber shall conduct a preliminary examination, i.e., a *prima facie* analysis, before the constitution of the Arbitral Tribunal, on matters related to the existence, validity, effectiveness and scope of the arbitration agreement, as well as to the consolidation of claims and to the extension of the arbitration clause, granted that the Arbitral Tribunal shall decide on its jurisdiction, by either confirming or changing the decision of the Presidency.

### **5. THE TERMS OF REFERENCE**

5.1. The Terms of Reference shall be prepared by the Secretariat of the Chamber together with the arbitrators and the parties, and shall include the names and identification of the parties, their counsel and the arbitrators, the place where the award is to be issued, whether it is permitted to judge the subject matter of the dispute on an *ex aequo et bono* basis, the amount of the claim, and the liability for payment of court costs, experts' and arbitrators' fees, as well as the statement that the Arbitral Tribunal is bound by the Terms of Reference and these Rules.

- 5.2. The parties shall execute the Terms of Reference together with the arbitrators and a representative of the Chamber. The Terms of Reference shall be filed by the Chamber. Absence of signature by either party shall not prevent the regular continuation of the arbitration.
- 5.3. Following the execution of the Terms of Reference, the parties shall not be authorized to introduce other claims, except as approved by the Arbitral Tribunal.

## **6. SUBMISSION AGREEMENT**

- 6.1. In the absence of an arbitration clause, if the parties wish to submit their dispute to arbitration, a submission agreement may be executed by the parties.

## **7. ARBITRATORS**

- 7.1. Well reputed persons may be appointed to act as arbitrators.
- 7.2. The person appointed to act as arbitrators shall disclose in writing any facts or circumstances whose nature may give rise to justified doubts on the arbitrator's Independence and Impartiality. The Chamber shall communicate such information to the parties in writing and set a time limit for them to submit their respective remarks thereon.
- 7.3. If, at any time, an arbitrator is challenged or requested to be disqualified, a time limit shall be assigned for the arbitrator (and also the parties, if they so wish) to present their comments. The matter shall be decided by a committee made up of three (3) members from the Chamber's List of Arbitrators, appointed by the President of the Chamber.

- 7.4. If, during the arbitral proceedings, any reasons justifying disqualification of arbitrators arise based on impediment or suspected bias, or in the event of death or incapacity of an arbitrator, the latter shall be replaced by another, appointed by the same party and, as the case might be, by the President of the Chamber, under the present Rules.
- 7.5. Arbitrators, in fulfilling their mission, shall not only be independent and impartial, but also discrete, diligent, competent, and shall also comply with the Code of Ethics.
- 7.6. The appointed arbitrators shall complete a questionnaire sent by the Secretariat of the Chamber, and execute the Statement of Independence.

## **8. THE PARTIES**

- 8.1. The parties may be represented by counsel with adequate powers to act on their behalf in the arbitral proceedings.

## **9. NOTICES, TIME LIMITS AND FILING OF DOCUMENTS**

- 9.1. For the purposes of these Rules, notices shall be sent by letter, facsimile, electronic mail or equivalent means, against receipt of the respective hard copy.
- 9.2. Time limits shall start running from the first business day following the date of delivery of the hard copy of the communication or notice, if the parties do not provide otherwise in the Terms of Reference.

- 9.3. All documents sent to the Arbitral Tribunal shall be received upon due lodging thereof with the Secretariat of the Chamber, in as many copies as the number of arbitrators and parties, and another copy to be filed with the Secretariat of the Chamber. Documents filed in an insufficient number of copies shall not be accepted.
- 9.4. The Arbitral Tribunal may set time limits for compliance with procedural orders. The time limits hereunder may be modified, at the discretion of either the Arbitral Tribunal or the President of the Chamber, in what regards item 2.2 (nomination of arbitrator).
- 9.5. In the absence of a time limit for a specific action, a five-day (5) deadline shall apply.
- 9.6. Documents in a foreign language shall be translated into Portuguese by means of free translation.

## **10. PROCEEDINGS**

- 10.1. Upon commencement of the arbitration, the Arbitral Tribunal, through the Secretariat of the Chamber, may summon the parties to attend a preliminary hearing to be held via the most convenient means. The parties shall be informed of the procedure and shall take the relevant actions for the regular development of the arbitration.
- 10.2. In the Terms of Reference, the parties and the arbitrators may agree on time limits for submissions and documents, and establish a provisional timetable of events. In the absence of mutual consent thereon, the Arbitral Tribunal shall set the respective time limits, timetable, and the order and form of production of evidence.
- 10.3. The Secretariat of the Chamber, following receipt of the pleadings submitted by the parties and the attached documents, shall send them to the arbitrators and to the parties.

- 10.4. The Arbitral Tribunal shall grant the evidence it deems useful, necessary, and relevant, and decide on the means for production thereof.
- 10.5. The Secretariat of the Chamber shall provide for the stenographic transcripts of the testimonies, as well as the services of interpreters or translators, the costs of which shall be borne by the parties.
- 10.6. The members of the Chamber, the arbitrators and the parties shall not disclose information they have had access to as a consequence of their functions or participation in the arbitral proceedings, except as required by law.
- 10.7. The proceedings shall continue to develop notwithstanding a default from either party, provided that such party had been duly notified to take part in the proceedings and all subsequent actions. No arbitral award shall be based on the party's default.

## **11. ACTS OUTSIDE THE SEAT OF ARBITRATION (PLACE OF ARBITRATION)**

- 11.1. If the Arbitral Tribunal considers necessary for an action to be taken outside the seat of arbitration, the parties shall be notified of the date, time, and place thereof, and shall be authorized to attend.
- 11.2. Once said action is taken, the President of the Arbitral Tribunal may draft a report, stating the facts and conclusions of the Arbitral Tribunal, which shall be communicated to the parties that will have the opportunity to comment.

## **12. HEARING FOR PRODUCTION OF EVIDENCE**

- 12.1. If witness testimony is needed, the Arbitral Tribunal, through the Secretariat of the Chamber, shall summon the parties to attend a hearing for the production of such evidence at a day, time and place to be defined in advance.
- 12.2. The hearing shall observe the procedural rules determined by the Arbitral Tribunal under the Terms of Reference or of a Procedural Order.
- 12.3. Upon conclusion of production of evidence, the Arbitral Tribunal shall set a date for the parties to submit their closing statements.

## **13. CONSERVATORY AND INTERIM REMEDIES**

- 13.1. The Arbitral Tribunal is competent to issue provisional measures, both injunctive and anticipatory, to the extent needed to ensure the proper development of the arbitral proceedings.

## **14. THE SEAT OF ARBITRATION (PLACE OF ARBITRATION)**

- 14.1. In the absence of a place of arbitration agreed by the parties, the place of arbitration shall be the city of São Paulo, unless otherwise decided by the Arbitral Tribunal, after hearing the parties.

## **15. THE ARBITRAL AWARD**

- 15.1. The Arbitral Tribunal shall render the award within sixty (60) days counted from the business day following the date set for the filing of the closing statements, which may be extended for another period of sixty (60) days, at the discretion of the Arbitral Tribunal. Exceptionally and upon justification, the Arbitral Tribunal may request a new extension to the President of the Chamber.



- 15.2. The arbitral award shall be rendered by majority vote, each arbitrator being entitled to one vote. In the absence of an agreement by the majority, the vote issued by the President of the Arbitral Tribunal shall prevail. The arbitral award shall be registered in writing by the President of the Arbitral Tribunal and signed by all arbitrators. Should an arbitrator be unable or unwilling to sign the award, the President of the Arbitral Tribunal shall certify such fact.
- 15.3. The dissenting arbitrator may provide grounds for his dissenting opinion, which shall be included in the arbitral award.
- 15.4. The arbitral award shall necessarily contain:
- a) a report with the name of the parties and a summary of the dispute;
  - b) the grounds for the decision, which shall provide for the findings of fact and findings of law, clarifying that it was made on an *ex aequo et bono* basis, if applicable;
  - c) the decision on the merits of the case, with all its specifications and deadline for performance of the award, if applicable;
  - d) the day, month, year, and the place where the arbitral award was rendered, subject to item 15.5. below.
- 15.5. The arbitral award shall be deemed to have been rendered at the seat (place) of the arbitration and on the date set therein, unless otherwise stated by the parties.
- 15.6. The arbitral award shall also contain the administrative costs, expenses, and attorneys' fees, as well as the respective apportionment.
- 15.7. Upon the issuing of the arbitral award, the arbitration shall be deemed to be closed, and the President of the Arbitral Tribunal shall send the award to the Secretariat of the Chamber so that it is sent to the parties, either by mail or by any other means of communication, against receipt.

15.8. The Secretariat of the Chamber shall comply with the provision of item 15.7 following effective proof of full payment of costs and arbitrators' fees by one or both parties, under Annex I – Schedule of Costs and Arbitrators' Fees.

15.9. The Arbitral Tribunal may issue a partial award, following which it shall continue with the proceedings and the production of evidence shall be restricted to the portion of the dispute pending decision not decided by the partial award.

## **16. REQUEST FOR CLARIFICATION**

16.1. Within ten (10) days from the date of receipt of the notice or of the personal knowledge of the arbitral award, the interested party, upon communication to the Secretariat of the Chamber, may submit a Request for Clarification to the Arbitral Tribunal, on the grounds of obscurity, omission, or contradiction in the award, requesting that the Arbitral Tribunal clarifies the obscurity, supplements the omission, or remedies the contradiction of the arbitral award.

16.2. The Arbitral Tribunal shall decide within ten (10) days, amending the arbitral award, if applicable, and by notifying the parties under item 15.7.

## **17. AWARD BY CONSENT**

17.1. If, during the arbitral proceedings, the parties reach an agreement on the dispute, the Arbitral Tribunal may issue an award by consent.

## **18. ENFORCEMENT OF THE ARBITRAL AWARD**

18.1. The arbitral award is final, the parties being bound to it in the manner and within the time periods therein stated.

## **19. ARBITRATION COSTS**

19.1. The Chamber shall prepare a table of costs and arbitrators' fees, as well as other expenses, establishing the payment means and terms, which may be reviewed by the Chamber from time to time.

## **20. FINAL PROVISIONS**

20.1. The parties shall choose the rules or the law that shall apply to the merits of their dispute and the language of the arbitration, and shall decide whether the arbitrators are authorized to enter an *ex aequo et bono* decision. In the absence of provisions or consent thereon, the Arbitral Tribunal shall determine the applicable rules or law, as well as the language, as it deems fit.

20.2. The Arbitral Tribunal shall interpret and apply these Rules to the specific cases, including any omissions, within the ambit of its powers and duties.

20.3. Any doubts and omissions resulting from these Rules, before the constitution of the Arbitral Tribunal, as well as in any cases not provided herein, shall be settled by the President of the Chamber.

20.4. The Chamber may publish excerpts of the arbitral award, with due omission of the parties' identities.

20.5. If the parties so wish, and upon their express authorization, the Chamber may disclose the full content of the arbitral award.

- 20.6. Upon written request, the Secretariat of the Chamber may provide the parties with certified copies of documents connected with the arbitration.
- 20.7. The Chamber may exercise the function of appointing authority of arbitrators in *ad hoc* arbitrations, through its Presidency, as agreed by the parties in the arbitration agreement.
- 20.8. The Chamber may, at the parties' request, administer arbitral proceedings under the UNCITRAL Rules (United Nations Commission on International Trade Law), upon observance of the Schedule of Costs attached hereto.
- 20.9. Arbitration agreements executed or stipulated before effectiveness of these Rules, and which provided for the use of Expedient Arbitration, shall be administered under the terms herein stated.
- 20.10. These Rules, duly approved under the Bylaws on November 29, 2012, will enter into force on August 1, 2013.
- 20.11. These Rules apply to arbitral proceedings commencing after the entry into force of these Rules.