Cpam
CENTRE PERMANENT D'ARBITRAGE
& DE MEDIATION DU CADEV

CENTRE AFRICAIN POUR LE DROIT & LE DEVELOPPEMENT

RULES OF ARBITRATION

AND

MEDIATION

OF CPAM*

* *In accordance with the OHADA law*

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PART I: RULES OF ARBITRATION

TITLE I: COMMENCEMENT OF ARBITRATION PROCEEDINGS

Article 1: Useful definitions

- **Arbitration agreement:** It shall refer to an arbitration clause or a submission agreement by virtue of which the parties refer their dispute to CPAM for arbitration.

- **Arbitrator**: He shall be a natural person selected by CPAM who is trained and registered in the CPAM's list of arbitrators and who is empowered to settle disputes according to the present rules of arbitration, by applying the law or the rules of equity.

- **Mediator:** He shall be a natural person selected by CPAM who is trained and certified as mediator and empowered to help the conflicting parties to find an agreed solution to their dispute.

- **Arbitral tribunal**: It shall refer to a single arbitrator or a panel of three arbitrators appointed to resolve a dispute referred to CPAM.

- **Arbitral award**: It shall refer to a decision by which the Arbitral tribunal settles a dispute referred to arbitration in part or in full.

- **Agreement protocol**: It shall refer to an act signed by the parties attesting their agreement following mediation proceedings.

- **Non-conciliation report**: It shall refer to an act signed by the Mediator establishing the failure by the parties to reach a partial or total agreement following mediation proceedings.

- **Costs of arbitration/costs of mediation**: Total expenses corresponding to the direct costs of an arbitration or mediation proceedings and which comprises the administration costs of the arbitration/mediation referred to CPAM, fees and expenses of arbitrators/mediators and fees of experts, if any.

Article 2 - Arbitration request

A. *The initiative to submit an arbitration request and the role of the applicant*

1. A party wishing to have recourse to the CPAM arbitration shall submit a written arbitration request to the Secretariat-registry of the Centre, in accordance with the procedure laid down in the present Rules.

2. An arbitration request shall contain the following information:

   a. The name in full, description, capacity and addresses of the applicant and respondent, with indication of the name of counsel and/or representative of the applicant and election of domicile.
   b. Mention of the arbitration agreement signed by the parties;

c. Mention of any document, contractual or not, which can supply information on the dispute;

d. Object of the request;

e. Brief presentation of the facts alleged by the applicant and the arguments in support thereof, and where possible, an estimate of the amount(s) claimed ;

f. Unless there is a prior agreement in this respect, the Applicant shall make proposals concerning the number and the choice of arbitrators, as well as the name of the arbitrator whom he is expected to nominate;

g. The agreement between the parties, if any, on the following:

- Seat of arbitration;
- Language or languages of arbitration;
- The law applicable to the arbitration agreement, the procedure and the substance of the dispute.

3. In the absence of such agreement, the Applicant shall make suggestions in respect of the above issues.

4. The arbitration request and the documents annexed thereto shall be produced in a number of copies sufficient to provide one copy for each party, plus one for each arbitrator to be designated and one copy for the Secretariat-registry.

5. The request shall be accompanied with a receipt attesting the total payment of costs required to initiate a case in accordance with the costs scale in the appendix.

6. In the event that the applicant fails to comply with either of the requirements for the submission of request as listed above, the Secretariat-registry may fix a time limit which the applicant must comply, failing which the file shall be closed without prejudice to the right of the applicant to submit the same claims at a later date in another request.

B. ***Processing of the request by the Secretariat-registry***

1. The Secretariat-registry shall acknowledge receipt of the request and, within five (05) days following such receipt, he shall send a copy to the respondent(s) together with a copy of the present rules.

2. The time limit to reply starts to run from the date of receipt of the arbitration request by the respondent(s).

Article 3 - Reply to the arbitration request

1. Within **thirty (30) days** from the receipt of the request from the Secretariat-registry, the respondent shall file a reply via the Secretariat-registry.

2. Where the respondent fails to reply within **thirty (30) days** provided in paragraph 1 above, and except there is a valid reason which has been formally communicated to the Centre before the

expiry of this time limit, the proceedings shall still take place notwithstanding such abstention or refusal.

3. The reply shall contain the following information :

a. The confirmation of full names, description, capacity and addresses of the respondent and his counsel as written by the applicant, with election of domicile;

b. The confirmation of the existence or non-existence of an arbitration agreement between the parties which attributes competence to CPAM ;

c. The presentation of facts and defence arguments together with supporting documents as well as the response of the respondent concerning the applicant's claim against him ;

d. The respondent's comments concerning the number of arbitrators and their choice in the light of the applicant's proposals as well as the name of the arbitrator whom he is expected to nominate;

e. The respondent's comments concerning all the issues raised in the arbitration request, namely, the seat and the language of arbitration as well as the rules of law applicable to the merits and to the procedure ;

f. Where appropriate, any counterclaim indicating the nature of the dispute, the relief sought and the amount counter-claimed.

4. The reply, either with a counterclaim or not, shall be accompanied with a receipt attesting that the respondent has paid his own share of the costs of initiating proceedings, in accordance with the costs scale of the centre.

5. The reply shall be submitted to the Secretariat-registry in a number of copies sufficient to provide one for each party, plus one for each arbitrator to be designated and one copy for the Secretariat-registry

6. The Secretariat-registry shall send immediately the copies of the reply and the documents annexed thereto to the applicant.

7. The respondent shall attach to the reply any proof indicating that the said reply and the documents annexed thereto have been notified to the applicant.

Article 4 - Counterclaim

1. Where the respondent files a counterclaim, the applicant shall have a time limit of **fifteen (15) days,** starting from the date of receipt of the counterclaim, to reply by submitting an additional note.

2. After receipt of the arbitration request, the reply thereof and the additional note, where applicable, the Secretariat-registry shall calculate the advance on costs payable by the parties in accordance with article 8 below and shall communicate the amount to the Supervisory Committee for approval.

Article 5 - New arguments-new requests

1. In the course of arbitration proceedings, a party may raise new arguments to support his initial allegations.

2. The parties may also submit new written requests, whether counterclaims or not. The arbitral tribunal may declare such requests inadmissible if it thinks that their examination can delay the outcome of the initial request or that they fall outside the limit of their Terms of Reference.

No further requests shall be admissible after the closing of hearings.

Article 6 - Effect of the arbitration agreement – Non-existence of the arbitration agreement

1. Where a party raises one or several pleas relating to the existence, validity or the scope of the arbitration agreement, the Centre may decide, without prejudice to the admissibility or the merits of these pleas that the arbitration shall proceed if it is *prima facie* established that an arbitration agreement exists. In such a case, any decision as to the jurisdiction of the arbitral tribunal shall be taken by the arbitral tribunal itself through a preliminary award.

2. Except otherwise decided by the parties, the arbitral tribunal shall not cease to have jurisdiction by reason of any claim that the contract is null and void or inexistent. The arbitral tribunal shall continue to have jurisdiction to determine the respective rights of the parties and to adjudicate their claims and pleas.

3. Where the Centre discovers that there is no arbitration agreement or that there exist no such arbitration agreement between the parties authorizing the application of the present rules of arbitration, and if the respondent declines the CPAM arbitration, or fails to reply within the time limit of **thirty (30) days** as provided by the present rules, the Arbitration Committee shall decide that arbitration cannot take place.

4. According to the above, the Secretariat-registry shall inform the applicant of this decision and take notice of the deficit.

Article 7 - Provisional requests – Interim measures

1. The Arbitral Tribunal may, at the request of a party, order any interim or conservatory measures it deems appropriate, namely, in respect of disputed goods, documents or tools

2. These interim or conservatory measures may be ordered through a partial award in respect of which exequatur may be requested *sine die*.

3. The request of a party to a competent judicial authority for interim or conservatory measures shall not necessarily be deemed to be an infringement or a waiver of the arbitration agreement and shall not affect the relevant powers reserved to the Arbitral Tribunal.

4. These requests, as well as the measures ordered by the judicial authority, shall be communicated without delay to the Centre which shall in turn communicate to the Arbitral Tribunal. The Arbitral Tribunal may not be seised of the same requests for interim or conservatory measures, unless the judicial authority before whom these requests are pending declines jurisdiction.

Article 8- Costs of Arbitration

A. *Principle*

1. Before the composition of the Arbitral Tribunal, the Centre shall fix the advance on costs in an amount likely to cover the expenses incurred to resolve the dispute.

2. The amount which is fixed for arbitration costs may be subject to readjustment during the proceedings if new circumstances arise necessitating such a readjustment or if the amount claimed is modified by one quarter at least.

B. *Modalities for the calculation and apportionment of the advance on costs*

1. The advance on costs shall be payable in equal shares by the applicant and the respondent. However, if the respondent submits a counterclaim with a stated amount, the Arbitration Committee may, if it deems necessary, calculate separately the amount arising from the main request and the one arising from the counterclaim and decide that each party shall pay the advance on costs which corresponds to its own claim.

2. The advance on costs shall be payable at the Secretariat of the Centre, latest on the date of the meeting during which the Terms of Reference are drafted.

3. The parties may secure payment of arbitration costs by providing bank guarantees.

4. At any stage of the proceedings, the Arbitral Tribunal may stay the proceedings so long as the advance on costs has not been fully paid up. In such case, the arbitration time limit shall not include the suspension period.

5. In the case mentioned in article 8.B.4 above, the adverse party may pay the advance on costs fully. In such a case, any award made shall order the reimbursement by the defaulting party in favour of the party who made the payment.

Article 9 - Assistance - Representation

A party may be assisted and/or represented by any person of his choice, who may be a professional advocate or not. The identity and the address of these persons and, possibly, their power of attorney shall be communicated, in witting, to the adverse party and to the Secretariat-registry. This communication shall also indicate if the designation is done in view of a representation and/or of an assistance.

TITLE II: THE ARBITRAL TRIBUNAL

Article 10 - Composition of the Arbitral Tribunal

1. Depending on the agreement of the parties, disputes shall be settled by a sole arbitrator or by a panel of three arbitrators.

2. Each party shall nominate the arbitrators, subject to their acceptance by the adverse party and their appointment by the Centre.

3. In view of the composition of the Arbitral Tribunal, the Centre shall propose to the parties the arbitrators who are registered in the CPAM's list. The parties may chose from the CPAM's list or propose other arbitrators not registered therein, subject to their acceptance and confirmation by the Centre in accordance with the provisions of the present Rules.

4. Where the dispute is to be referred to three arbitrators, each party shall nominate in the arbitration request and reply, respectively, one arbitrator for confirmation by the centre. The third arbitrator, who shall, in principle, act as Chairman of the Arbitral Tribunal, shall be appointed by the Centre.

5. Where the parties are unable to agree on the number and/or the identity of arbitrators within **fifteen (15) days** from the date of receipt of the respondent's reply, the Supervisory Committee shall compose the Arbitral Tribunal.

6. Where there are multiple applicants or respondents and where the dispute is to be referred to three arbitrators, the multiple applicants, jointly, and the multiple respondents, jointly, shall nominate an arbitrator for confirmation by the Supervisory Committee. In the absence of such a joint nomination and where all the parties are unable to agree on the methods for the composition of the Arbitral Tribunal after **fifteen (15) days**, the Supervisory Committee may appoint each arbitrator and select one of them to act as chairman of the Arbitral Tribunal.

Article 11- Independence and impartiality of arbitrators

1. By accepting to settle a dispute, the arbitrator undertakes to carry out his mission until its completion in accordance with the rules of ethics and deontology.

2. Every arbitrator nominated by the parties and confirmed by the Supervisory Committee shall be and remain impartial and independent vis-à-vis the parties and their counsels.

3. Where an arbitrator has been chosen by a party and confirmed by the Supervisory Committee, he shall not consider himself as representing the interests of the said party.

4. Every arbitrator whose nomination or confirmation is envisaged shall submit to the Centre a statement of acceptance, independence and availability. In this statement, the prospective arbitrator shall disclose any facts or circumstances which might be of such nature as to call into question his independence and impartiality in the eyes of the parties.

5. Similarly, during the arbitration, an arbitrator shall immediately disclose to the Secretariat-registry any new facts or circumstances which might be of such nature as to affect his neutrality and impartiality.

6. The Registry shall communicate such information to the Supervisory Committee for appropriate action. If the lack of independence is established, the Committee shall terminate the mandate of the arbitrator, and another arbitrator shall immediately be appointed following the same conditions as those which applied to appoint the previous arbitrator.

7. Before confirmation and during arbitration, an arbitrator shall undertake not to entertain any relationship with a party, except for the needs of procedure and, in such case, he shall scrupulously comply with the principle of adversarial proceedings.

Article 12 - Challenge of arbitrators

1. Every arbitrator may be challenged if there exist circumstances of such nature as to raise serious doubts as to his independence and impartiality.

2. A challenge of an arbitrator, whether for an alleged lack of independence, impartiality or otherwise, shall be made by submission to the Secretariat-registry for transmission to the Supervisory Committee, of a written statement specifying the facts and circumstances on which the challenge is based.

3. For a challenge to be admissible, it must be sent by a party either within **fifteen (15) days** from receipt by that party of the notification of appointment or confirmation of the arbitrator by the Centre, or within fifteen **(15) days** from when the party making the challenge was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.

4. The Supervisory Committee shall rule on the admissibility and the merits of the challenge after the Secretariat-registry must have afforded an opportunity for the arbitrator concerned, the parties and other members of the Arbitral Tribunal, if any, to comment in writing within **fifteen (15) days,** after hearing both sides, the Supervisory Committee shall rule on the challenge through a decision which shall not be subject to appeal.

5. Arbitration proceedings shall be stayed while the examination of the application for challenge takes place.

6. Application for challenge shall not be admissible once the final award is sent to the Secretariat-registry.

Article 13 - Replacement of arbitrators

1. An arbitrator shall be replaced upon challenge, resignation or death.

2. An arbitrator shall also be replaced at the court's own initiative where he is prevented *de jure* or *de facto* from fulfilling his functions or where he is not fulfilling his functions in accordance with the present rules or Code of Ethics of CPAM.

3. When, on the basis of information that has come to its attention, the court considers applying the preceding paragraph, it shall decide on the replacement after the arbitrator concerned, the parties and other members of the Arbitral Tribunal, if any, had an opportunity to submit their written comments to the Secretariat-registry within within **fifteen (15) days as mentioned** at 12.4.

4. When an arbitrator is replaced, the re-constituted Arbitral Tribunal shall, after having invited the parties to comment, determine if, and to what extent prior proceedings shall be repeated.

5. The Centre shall, when the time comes, fix the conditions for remunerating the replaced and the replacing arbitrators. It shall take into account the reason of replacement and the state of advancement of the proceedings.

6. The decisions of the Supervisory Committee on matters pertaining to the confirmation, challenge, replacement or remuneration of replaced and replacing arbitrators shall not be subject to appeal.

TITRE III: ARBITRAL PROCEEDINGS

Article 14 - Notification – Calculation of time limits

A. *Notification of acts of procedure*

1. Within the meaning of the present rules of arbitration, a notification, communication or proposal shall be deemed to have reached the addressee if it is served at his habitual residence, establishment, postal address, or at his place of election of domicile, or, if none of these addresses has been found after a reasonable investigation, at the last known residence or establishment of such addressee.

2. Notification may be done by a delivery against receipt, registered mail with acknowledgment of receipt, or by any other means of communication that provides a record of the sending thereof. Electronic communications shall be valid provided they clearly carry the author's signature. They may relate to submissions and documents of procedure, all sorts of requests, or they may seek to acknowledge receipt of a document, reply to a summons or to confirm a previous written undertaking. For a party to rely on electronic mails, they must be sent to the Secretariat-registry at the e-mail address of CADEV, with copies to the tribunal and the adverse party.

3. Every document to be communicated, whether physical or electronic, shall be produced in a number of copies sufficient to provide one copy for each party, plus one for each arbitrator and one for the Secretariat-registry

B. *Calculation of time limits – extension of time limits*

1. The time limits for proceedings as specified in the present rules of arbitration start to run on the day following the date on which a formal communication was made to the addressee by the Secretariat-registry. When the last day of the time limit is an official holiday or non-business day at the place of residence or establishment of the addressee, the time limit shall be extended to the first following business day. Other official holidays and non-business days which occur during the time limit are included in the calculation of time limit.

2. Where the circumstances so justify, the Centre may, after consulting the parties or upon the latter's request, extend the time limits provided in these rules as well as any other time limit which has been fixed.

Article 15 - Seat of arbitration

Unless otherwise agreed by the parties, arbitration shall take place in Douala at the CPAM's operational headquarters or in any other place, city or country as agreed by the arbitrators and the centre.

Article 16 - Language of arbitration

1. Unless otherwise agreed by the parties, the language of arbitration shall be French or English.

2. The Arbitral Tribunal may request that all documents annexed to the request or to the reply thereof and all additional documents produced during the proceedings which were submitted in their original language be accompanied with a translation into the language of arbitration.

Article 17 - Rules applicable to the procedure

The law applicable to the procedure shall be the present rules of arbitration, in accordance with the OHADA Uniform Act on Arbitration. Where the rules are silent, the Arbitral Tribunal shall refer to the OHADA Uniform Act on arbitration and, where appropriate, to trade usages on arbitration.

Article 18 - Law applicable to the merits of the dispute – Amicable settlement

1. The parties shall be free to agree upon the rules of law to be applied by the Arbitral Tribunal to the merits of the dispute. In the absence of any such agreement, the Arbitral Tribunal shall apply the rules of law which it determines to be appropriate by taking into account the relevant trade usages.

2. The parties may, in their arbitration agreement, in the Terms of Reference or during the proceedings, decide unanimously and in writing to confer to the Arbitral Tribunal the powers of amicable settlement. In such case, the Arbitral Tribunal shall be justified to depart from the rule of law where the latter is not of public policy nature, and to decide *ex aequo et bono.*

Article 19 - Preparatory meeting – Terms of Reference

1. Upon accepting his mission by the sole arbitrator or the third arbitrator, the Secretariat-registry, in agreement with the Arbitral Tribunal, shall convene a meeting with the parties in view of drafting the Terms of Reference.

2. The preparatory meeting must hold within the shortest time possible and latest within **fifteen (15) days** from the date of acceptance of his mission by the last arbitrator.

3. The preparatory meeting may hold through correspondences, and, namely, through the exchange of electronic mails. In such case, the Secretariat-registry, via the e-mail address of CADEV, shall be copied for every e-mail exchanged.

4. The preparatory meeting seeks to:

   a) Take notice of the effective seizure of the Centre;

   b) Take notice of the existence or non-existence of an agreement between the parties on the seat and the language of arbitration;

   c) To take notice that the Arbitral Tribunal shall have to rule on issues in respect of which the parties could not agree;

   d) Take all necessary measures for the smooth conduct of the arbitral proceedings and decide on the modalities of their application ;

   e) Draft a provisional timetable that the Arbitral Tribunal intends to follow, specifying the date on which respective submissions shall be filed, as well as the dates of closing of hearings and start of deliberations ;

   f) Take notice that the parties have conferred or not the powers of amicable settlement to the Arbitral Tribunal.

   g) Examine, if appropriate, the possibility to propose a prior mediation to the parties.

5. At end of the meeting, the Arbitral Tribunal shall write a report which shall be tantamount to the Terms of Reference. The report which has thus been written shall be signed by the members of the Arbitral Tribunal and the parties. The arbitration time limit shall start to run from the date of signature of the Terms of Reference.

TITLE IV: ESTABLISHING THE FACTS OF THE CASE

Article 20 - General Principles

1. The Arbitral Tribunal shall establish the facts of the case by all appropriate means within a time limit which shall not exceed **sixty (60) days**, except the parties and the Centre agree for an exceptional extension of time limit.

2. The time limit for establishing the facts of the case starts to run from the date of signature of the Terms of Reference, and ends with total or partial deliberation of the matter. In case of partial award, a new time limit shall be agreed upon between the parties and the Arbitral Tribunal.

3. When establishing the facts of the case, the Arbitral Tribunal shall ensure the equality between the parties and comply with the principle of adversarial proceedings. All documents or information supplied to the Arbitral Tribunal by a party shall be communicated simultaneously to the adverse party and to the Secretariat-registry.

4. Arbitration proceedings shall be confidential. Insofar as it has not been provided otherwise in writing, the parties, their counsels, arbitrators, experts, and all other persons involved in the arbitration proceedings shall be bound by professional secrecy. They shall keep information and documents produced during the arbitral proceedings confidential. Professional secrecy and confidentiality shall, under the same conditions, be extended to works started as well as meetings which are scheduled within the framework of the arbitration proceedings.

Article 21 - Hearings

1. Save with the approval of the parties and the Arbitral Tribunal, hearings shall not be opened to persons who are foreign to the proceedings.

2. The parties shall appear in person or through duly authorized representatives. They may be assisted by their counsels who shall not necessarily be professional advocates.

3. Where a party, although duly summoned, fails to appear, the Arbitral Tribunal, after having established that he effectively received the summons and that he has no valid excuse, shall proceed with his mission and the hearings shall be deemed adversarial.

4. Where a party who is duly summoned to produce documents fails to do so within the prescribed time limit and without a valid reason, the Arbitral Tribunal may rule on the basis of documents and information which are at its disposal without the risk of infringing the principle of adversarial proceedings.

5. Where the nature of the case so permits, the Arbitral Tribunal may decide the case solely on documents submitted, after formal approval by the parties.

Article 22 - Evidence-Witnesses

1. Each party shall adduce evidence in support of the facts upon which his allegations and arguments are based.

2. At any time during the proceedings, the Arbitral Tribunal may summon the parties to provide additional evidence, by fixing a time limit to this effect.

3. Where the parties wish to call witnesses at the hearings, each one of them shall communicate within the shortest time limit to the Arbitral Tribunal and to the adverse party the names and addresses of the witnesses which such party intends to call as well as the object of their testimonies and the language in which they will be presented.

4. Where the hearings are conducted in camera, the Arbitral Tribunal may request the other witnesses to leave the chamber when others are presenting their testimonies.

5. The Arbitral Tribunal shall be free to determine the manner in which witnesses will be examined.

6. Testimonies may also be administered through written statements signed by the witnesses.

Article 23 - Experts

1. The Arbitral Tribunal may, at its own initiative or at the request of the parties, appoint one or more experts, define their Terms of Reference and receive their reports.

2. The experts and, possibly, the counter-experts may, after submitting their reports, be invited at the hearings to which the parties are given the opportunity to take part and to examine them.

3. Expert's fees shall be payable by the party who requested for the expertise. Where the expertise is requested by the Arbitral Tribunal, the fees shall be payable in equal shares by the parties.

4. The expert' fees shall be deposited at the Secretariat-registry before the commencement of the expertise, and shall be paid to the expert after deposit of his report duly received by the Secretariat-registry. Where the interested party or the parties fail to pay the amount fixed for expert's fees within the time limits prescribed by the Tribunal, the latter shall take notice of such failure and proceed with the matter.

Article 24 - Closing of hearings – Deliberations

1. When the Arbitral Tribunal is satisfied that the parties have had a reasonable opportunity to present their case and that it has been sufficiently informed about the case, it shall declare the proceedings closed and start deliberations.

2. Before deliberations *per se*, deliberation notes may be given to the Arbitral Tribunal with a copy to the adverse party.

3. Owing to exceptional circumstances which may have significant effects on the award to be made, the Arbitral Tribunal may, on its own initiative or upon request by a party, and in the interest of the proceedings, decide to close deliberations and reopen the hearings at any stage before the pronouncement of the decision.

Article 25: Compromise during the arbitral proceedings

1. Where in the course of proceedings, parties decide to compromise and as a result, the arbitration proceedings can no longer continue, the Arbitral Tribunal shall take notice of this compromise and make a decision for the withdrawal of the case.

2. The parties may, notwithstanding their agreement to compromise, decide that the arbitration shall continue and request the Arbitral Tribunal to continue its mission. In such case, the Arbitral Tribunal shall make an award in the form of consent award on the basis of the elements establishing the compromise.

3. Consent award shall not be subject to appeal.

4. In any case, administrative costs which have already been paid as well as the amount deposited for arbitrators' fees shall not be reimbursed.

TITLE V: ARBITRAL AWARD

Article 26 - Modalities, time limit for making award

1. The Arbitral Tribunal shall produce a draft award within the time limit of thirty (30) days from the start of deliberations.

2. This time limit may, upon request made by a party and accepted by the other or upon a reasoned request of the Arbitral Tribunal after a favorable opinion of the parties, be reasonably extended through a decision of the Supervisory Committee.

3. The draft arbitral award, whether partial, total or additional, shall be submitted to the Supervisory Committee for scrutiny. Its opinion which is compulsory is however only consultative. No award may be notified to the parties until it has been approved by the Supervisory Committee as to its form.

1. The Supervisory Committee, without affecting the Arbitral Tribunal's liberty of decision, may draw its attention on points of form as well as the compliance with the Rules of Arbitration and the Code of Ethics.

2. During the scrutiny of the draft award, the Supervisory Committee shall supply to the Arbitral Tribunal some useful indications concerning the payment of costs, and namely, it shall fix the amount of arbitrators' fees and administrative costs.

Article 27 - Form and content of arbitral award

1. An arbitral award shall be in writing.
2. Depending on the parties' requests or the nature of the dispute, the Arbitral Tribunal may make a final, provisional, partial or additional award.

3. An arbitral award shall contain :

   - Full names of the sole arbitrator or arbitrators who constituted the Arbitral Tribunal;

   - The date on which award was made ;
   - The seat of arbitration;

- Full names, description and addresses of the parties ;

- Full names and addresses of counsels or any person who represented or assisted the parties ;

- Presentation of respective claims of the parties, their arguments as well as the stages of the procedure ;

- Reasons upon which the award is based, subject to exceptional cases where award shall not be reasoned;

- Statement of the Tribunal's decision concerning the admissibility, the merits and the costs.

4. The award shall be signed by the sole arbitrator or by all the arbitrators constituting the Arbitral Tribunal. Where the award is given by a majority decision, the refusal of the minority arbitrator to sign shall not affect the validity of the said award. However, the reason of such refusal to sign the award shall be stated therein.

5. Where the Arbitral Tribunal is composed of three arbitrators, the award shall be given by a majority decision. If there is no majority, the award shall be made by the Chairman of the Arbitral Tribunal alone.

Article 28 - Consent award

1. Where the parties reach a compromise which resolves all or part of their dispute before an award is made, the Arbitral Tribunal shall give a decision for case withdrawal and closing of arbitral proceedings concerning the issues in respect of which a compromise was made.

2. In such case, the parties may request the Arbitral Tribunal to record their settlement in the form of consent award which need not be reasoned.

3. The fact that the parties reach a compromise before the giving of award shall not exempt them from paying the cost of arbitration in full. As such, the amount fixed as arbitration costs shall remain due and it shall be incumbent on the Supervisory Committee to determine the payment modalities concerning the arbitrators' fees.

Article 29 - Notification and deposit of the award

1. Once an award has been made, the Secretariat-registry shall notify the text signed by the Arbitral Tribunal to the parties, provided always that the costs of arbitration have been paid in full to the said Secretariat by the parties or by one of the parties.

2. Additional copies certified true by the Secretariat-registry shall be issued on request and at any time to the parties and only to them.

TITLE VI – RECOURSE AGAINST ARBITRAL AWARD

Article 30 - *Res judicata* of awards - recourse against arbitral awards

1. Arbitral awards shall be binding on the parties. By referring their dispute to arbitration under the present rules, the parties undertake to enforce without delay any award which may be made.

2. Arbitral awards shall equally be binding on the State and its entities, parastatals, and public companies, as well as any other moral entity governed by public law, without the possibility for the latter to invoke immunity from execution to prevent the enforcement of awards.

3. In accordance with the OHADA Uniform Act on arbitration, awards made under the CPAM's Rules of arbitration shall not be subject to appeal, opposition and judgment setting it aside.

Article 31 - Correction and interpretation of the award

1. The Arbitral Tribunal may, on its own initiative or upon request of a party, correct a clerical, computational or typographical error contained in the award.

2. Any request of a party for the correction of clerical errors, interpretation of an award or for additional award, if the Arbitral Tribunal failed to rule on a request submitted by a party, must be made to the Secretariat-registry within the time limit of **thirty (30) days** from notification of award.

3. Upon receipt of the request, the Secretariat-registry shall transmit the latter to the Arbitral Tribunal and to the adverse party. The Secretariat-registry shall grant to the adverse party a time limit of **fifteen (15) days** to submit his remarks to the applicant and to the Arbitral Tribunal.

4. After scrutinizing the opinions of both parties and the documents produced, the draft award must be submitted to the Supervisory Committee for prior scrutiny within a time limit of **seven (07) days** from expiration of the time limit granted to the other party to submit his remarks.

5. If the award is corrected, a correction note is written by the Arbitral Tribunal and notified to the parties by the Secretariat-registry. The said note is appended to the initial award, unless the Arbitral Tribunal decides to draft a consolidated award which must be signed and transmitted to the Secretariat-registry.

Article 32 - Recourse for nullity of award

1. In accordance with the OHADA Uniform Act on arbitration, recourse for nullity of award shall only be admissible in the following cases :

   a. Where the Arbitral Tribunal has ruled without an arbitration agreement or on the basis of an agreement which is void or had expired;

   b. Where the Arbitral Tribunal was irregularly constituted or the sole arbitrator was irregularly appointed ;

   c. Where the Arbitral Tribunal made a ruling without conforming to the mission conferred on him ;

   d. Where the principle of adversarial proceedings was infringed ;

   e. Where the Arbitral Tribunal infringed a rule of international public policy;

   f. Where reasons upon which the award is based were not given.

2. The petition for nullity shall be admissible as soon as the award is made; it shall cease to be admissible if it has not been made within **one month** from notification of the award to which an exequatur is affixed.

3. In accordance with the OHADA Uniform Act on arbitration, the competent judge to entertain petitions for nullity of an award made by CPAM shall be determined by the domestic law of the State before whose courts the recourse is envisaged.

TITLE VII: COSTS OF ARBITRATION

Article 33 - Nature and amount of arbitration costs

The costs of arbitration shall be fixed on the basis of the costs scale adopted by CPAM. They shall comprise the following costs some of which are constant while others vary:

a) The costs for seising the Centre ;

b) Administrative costs payable to the Centre for the expenses incurred to organize and administer the proceedings ;

c) Fees and expenses of the members of the Arbitral Tribunal indicated separately for each arbitrator, in accordance with the scale in force ;

d) Administrative costs upon requests for conservatory measures, application for challenge, request for correction/interpretation of award ;

e) The fees and expenses of experts or any other expenses incurred by the Arbitral Tribunal for the interest of the parties ;

f) Costs of transportation and other allowances payable to witnesses, where such expenses were approved by the Supervisory Committee.

Article 34- Decision as to the costs of arbitration

1. The amount of arbitration costs shall be fixed in the final resort by the Supervisory Committee after consulting the Secretariat-registry.

2. During arbitration proceedings, the amount of arbitration costs may be subject to readjustments by the Secretariat-registry where it appears from the circumstances of the case or from the submission of new requests that the significance or the complexity of the case is greater than it was initially perceived. In such case, the parties shall be called upon to effect additional payment following the conditions stated in article 8 above.

3. Every payment concerning the costs as defined in article 33 above shall be effected at the Secretariat-registry.

4. The payment of experts and arbitrators' fees shall be done upon presentation of invoices duly drawn up by the beneficiaries. Every tax burden due in respect of such payments shall be borne by the said beneficiaries.

5. The Secretariat-registry shall also carry out deductions from the fees and administrative costs to make up the Alternative Justice Development Fund, in accordance with article 8.4 of the organic law of CPAM, depending on the decision of the Board to this effect.

6. Except as otherwise agreed by the parties, the final award shall make a pronouncement in respect of the costs of arbitration and shall decide if they will be borne by one party or by both parties and in what proportion.

Article 35 - Final provisions

1. In respect of any matter not explicitly addressed by the present rules, the CPAM and the Arbitral Tribunal shall refer to the OHADA Uniform Act on arbitration or to the wishes of the parties where the issue concerned is not of public policy nature.

2. Where a party, knowing that any provision or condition stipulated in the present rules has been infringed, yet continue the arbitration without raising any objection, such a party shall be deemed to have waived this right, except where the breach concerns a public policy rule. In such case, he shall be deemed to have consented to arbitration.

3. Where there is conflict between a provision of the present rules and any rule applicable to the procedure or the merits as chosen by the parties, the latter shall prevail, subject to the compliance with public policy.

4. The present Rules of Arbitration shall be binding on the parties, arbitrators and the organs of the Centre as well as any other person who is called upon to intervene in any given capacity in the arbitration proceedings governed by the said Rules.

PART II: RULES OF MEDIATION

TITLE VIII: CONDITIONS FOR RECOURSING TO MEDIATION – COMMENCING A MEDIATION AT CPAM

Article 36 - Useful definitions

- **Agreement protocol:** An act signed by the parties to establish their agreement following mediation proceedings.

- **Non-conciliation report:** An act signed by the mediator to acknowledge a total or partial disagreement by the parties following mediation proceedings.

- **Costs of mediation:** All expenses representing the direct costs of mediation proceedings and comprising the mediators' fees, administrative costs payable to CPAM, possible disbursements of mediators, and experts' fees, as the case may be.

Article 37 - Starting mediation at CPAM

1. The recourse to CPAM's mediation shall be made in the five following cases:

a) Where the parties provided for mediation in their contract as the mode of amicable settlement of any disputes in matters relating to the execution or interpretation of their contract;

b) Where the parties so agree once a dispute arises;

c) Where the Centre, upon being seised of an arbitration request, feels that mediation may be more appropriate to resolve the case, and the parties agree to submit to such mediation ;

d) Where a party spontaneously seises CPAM of a mediation request without any mediation clause in the contract or any mediation agreement signed by the parties prior to the conflict.

e) Where the parties agree to withdraw their dispute from a State court, and decide to recourse to CPAM.

2. The parties may provide for mediation as the only and final mode of resolving their dispute, as a pre-condition for resorting to arbitration, or as a pre-condition for seising a State court.

3. All mediation whose organization is conferred on CPAM shall entail adherence of the parties to the present rules of mediation.

Article 38. Mediation as a pre-condition (for arbitration)

1. A mediation may be proposed to the parties, either by CPAM where the Arbitral Tribunal has not yet been constituted or by the Arbitral Tribunal upon commencement of the proceedings and, namely, during the drafting of the Terms of Reference provided in article 18 of the present rules.

2. If the parties so agree, a mediation shall be organized immediately following the conditions laid down in the present rules. In such case, the arbitration proceedings shall be stayed.

3. Where the said mediation does not lead to an agreement that permanently resolves the dispute, arbitral proceedings shall resume, upon request of the most diligent party and in accordance with the provisions of the present rules.

Article 39. Mediation request

1. The mediation request may be joint, that is, initiated by both parties. Failing such joint request, it may be initiated by the most diligent party.

2. A mediation request shall contain:

   - The identity of the parties to mediation;
   - The full address of the parties ;
   - The presentation of the facts and the applicant's prayer;
   - An attestation of payment of mediation costs (costs for initiating the mediation and mediator or mediators' fees in accordance with the scale);
   - A brief presentation of the facts and the respective positions of the parties or the position of the party who is seising the Centre ;
   - Payment of costs for initiating mediation proceedings, which shall be fixed in accordance with the scale in force. This amount shall still be due to the Centre regardless of the outcome of the mediation request.

3. Where mediation is proposed by CPAM in the case stipulated in article 37.1 above, the arbitration request shall be tantamount to the mediation request and the costs of initiating the mediation shall be deducted on the amount paid for the recording of the arbitration request.

4. The mediation request shall be recorded by the Secretariat-registry who shall notify as soon as possible to the adverse party for the continuation of proceedings.

Article 40. Reply to mediation request

1. At the behest of the Secretariat-registry, the mediation request, together with a copy of the present rules, shall be served to the adverse party.

2. The latter shall reply within **fifteen (15) days**

3. Where the adverse party fails to reply after **fifteen (15) days**, or where he explicitly rejects the proposal for mediation, the Centre, while taking notice of this situation, shall inform the party who initiated the request and shall close the file; the costs for file recording shall be due to the Centre.

Article 41. Payment of mediation costs

1. Based on the request and the reply thereof, the Secretariat-registry shall calculate the mediation costs in accordance with the CPAM's scale, and shall notify the amount to the parties for advance payment.

2. Mediation proceedings shall commence only when the parties have fully paid the required costs.

TITLE IX: CONDUCT OF THE MEDIATION

Article 42. Nomination of mediator

1. The mediator shall be nominated jointly by the parties on the basis of the mediation agreement provided in their contract, or concluded after the dispute has occurred.

2. Where the parties cannot agree on the identity of the mediator after the time limit provided to this effect in the mediation agreement, the Centre shall nominate a sole mediator.

3. In principle, all mediation proceedings shall be referred to a sole mediator. However, where the circumstances of the case so require, two mediators may be nominated to act in co-mediation. In any case, the mediator shall be registered in the CPAM's list of mediators.

4. Every prospective mediator shall be confirmed by the Centre, after production of a statement of independence and impartiality.

Article 43. The first preparatory meeting

After recording the mediation request and the reply thereof, and after collecting the costs of mediation comprising the costs for initiating proceedings, administrative costs and mediator's fees, the Secretariat-registry shall organize the first meeting between the mediator and the parties. This meeting shall enable the mediator to have a precise idea about the dispute and the state of mind of the parties so as to define the method of mediation which he finds suitable for the case.

Article 44. Role and modalities of mediator's intervention

1. A mediator shall help the parties to find a negotiated solution to their dispute.

2. In order to find a negotiated solution to the dispute, the mediator may hear the parties separately or collectively, or even alternate between collective hearing and separate discussion.

3. The mediator shall carry out his mission freely, with speediness and equity, and shall take into account the wishes of the parties so as to propose a solution which is likely to be satisfactory for both parties.

Article 45. Conduct of mediation and parties' obligations

1. The parties shall have control of any agreement which may be made. Each one of them may make suggestions to the mediator in view of obtaining an amicable settlement of the dispute.

2. Parties shall act in good faith. They shall cooperate with the mediator and obey to all requests made by the latter concerning, namely, the production of pertinent documents, presentation of evidence and participation to the meetings.

3. Where a mediation proceedings is pending, the parties shall not refer the dispute to arbitration or to State jurisdictions. However, where there is a threat, parties can recourse to State jurisdictions for conservatory measures.

Article 46. Confidentiality

1. Mediation proceedings shall be confidential. They shall take place in camera and only persons who are invited by a party with the agreement of the mediator can be allowed to participate.

2. Where the mediator receives from a party some information concerning the dispute, he may only communicate such information to the adverse party if the party who gave the information so agree. However, where a party gives information to the mediator with an explicit confidentiality recommendation, the said mediator shall not disclose to the other party.

3. No report, declaration or proposal of agreement made by the parties and/or the mediator may be used subsequently, even before a court of law, except the parties so agree.

Article 47. Mediation time limit

1. The mediator shall have a time limit of thirty (30) days to close the mediation. Time shall start to run from the date of preparatory meeting mentioned in article 42 above or, if such meeting was deemed irrelevant, from the date on which the mediator formally accepted his mission.

2. Where the circumstances of the case so permits, the time limit mentioned in article 46.1 above may be extended by the Supervisory Committee upon request by the parties and/or the mediator.

3. In case where, for one reason or the other, the mediator feels he can no longer continue his mission, he shall suspend same and report this situation to the Secretariat-registry without delay. The Supervisory Committee shall proceed to replace him without delay if it appears that the mediation can continue. Where the proceedings cannot be continued, the Centre shall close the mediation and take notice of the end of proceedings.

4. Where the mediation was proposed by the Centre prior to arbitration, the parties may, at any stage of the proceedings, request the end of mediation and the immediate start of arbitration proceedings, if need be. The mediator may not be appointed arbitrator or intervene in any other capacity in the surviving dispute, except upon written request by all the parties.

Article 48: End of mediation

1. Mediation shall end with:

   a) An agreement protocol signed by the parties and approved by the mediator ;

   b) A non-conciliation report signed by the mediator taking notice of the failure of mediation and paving the way for further proceedings;

   c) Default by the parties for non-payment of mediation costs.

2. Where the mediation ends with an agreement, the mediator shall record such agreement in the form of an agreement protocol signed by the parties and carrying the mediator's visa.

3. An agreement protocol signed by the parties shall have a final and conclusive authority. It shall be binding on the parties and shall permanently resolve the dispute.

4. The parties shall ensure prompt execution of an agreement protocol resulting from the mediation proceedings. Where a party refuses to voluntarily execute, the party in whose favour such protocol is made shall request the competent State judge to affix an executory clause which shall transform the agreement protocol into an enforceable right likely to be forcefully executed.

5. With regard to the procedure for obtaining the executory clause, the parties shall agree, as from the signing of the mediation agreement, to confer the necessary powers to a counsel whom they shall choose for the latter to perform all acts relating thereto; they shall equally undertake not to go back on their agreement before the State judge from whom approval is sought.

Article 49 **Mediation costs**

1. Mediation costs shall comprise administrative costs, mediator's fees and possible disbursements of mediators. The costs shall be fixed on the basis of the scale in the appendix.

2. Mediation costs shall be payable in equal shares by the parties, except they provide otherwise in their agreement protocol.

3. Before the start of mediation, the Centre shall call on the parties to pay the advance costs to cover the mediation costs. These costs shall not be reimbursed to the parties if the mediation ends with a total or partial non-conciliation report.

4. After establishing the complexity of the case and/or the exceptional work load which the case necessitates, Le Centre may, at the initial stage or during the proceedings, decide to increase the mediation costs as provided by the CPAM's scale. In such case, the parties shall be required to pay an additional amount.

5. Where mediation takes place in a city other than the CPAM's headquarters city, the transportation costs of mediators and representatives of the Secretariat-registry shall be borne by the parties.

Article 50: Appendices

1. The present rules of mediation and arbitration, which are based on the CPAM's organic law, are complemented by a costs scale for mediation and arbitration proceedings as well as a code of ethics.

2. These appendices may, in case of need, be amended independently of other provisions of the rules of mediation and arbitration.

Article 51: The Coming into force

The present rules of arbitration and mediation shall come into force from the date of its adoption.

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