



# International Seed Federation

## Procedure Rules for Dispute Settlement for the Trade in Seeds for Sowing Purposes and for the Management of Intellectual Property

### Mediation, Conciliation, Arbitration

July 2008

These ISF Procedure rules for dispute settlement incorporate the following documents:

- The Arbitration Procedure Rules adopted by the General Assembly of FIS in Amsterdam on May 22, 1996, from this date onwards replacing all previous FIS Arbitration Procedure Rules, as well as the amendments adopted in 1998 (art. 21), in 2000 (art. 12.1) and in 2001 (art. 12.1 and 18.4);
- Guidelines on Mediation and Conciliation, and their amendments adopted in 2001 (art. 5.1);
- Mediation, Conciliation and Arbitration for Disputes between Professionals Concerning the Management of Intellectual Property Rights in the Field of Plant Breeding;
- Code of Ethics for Arbitrators.

Amendments to these rules were adopted by the General Assembly in Prague on 28 May 2008. They became effective on 1 July 2008 and replace all previous versions.

In case of disagreement as to the interpretation, the English text is considered the original.

# ISF PROCEDURE RULES FOR DISPUTE SETTLEMENT FOR THE TRADE IN SEEDS FOR SOWING PURPOSES AND FOR MANAGEMENT OF INTELLECTUAL PROPERTY

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# A. Guidelines on Conciliation and Mediation

## FOREWORD

As a principle, settlement is a desirable solution for business disputes. Although arbitration is a useful process which often leads the dispute to a binding and final decision, these guidelines express the idea that the parties should look primarily within themselves to resolve private commercial conflicts through personal understanding and mutual cooperation. ISF, therefore, has set out these guidelines in order to facilitate the settlement of such disputes.

The outcome of mediation and conciliation is not a judgment establishing who is right and who is wrong. It is simply an agreement between the parties. These non-binding techniques will allow the parties themselves to control both the process and the outcome. They are typically voluntary and private methods of resolving disputes in which an impartial third party does not replace the parties but helps them negotiate a settlement. When the parties enter into an agreement to mediate or to conciliate, it implies that they commit themselves to try, in good faith, to resolve the conflict retaining the decision making power.

For that purpose, ISF not only gives the parties the possibility of using a wide range of tools to have the dispute settled, but also encourages them to use them whenever possible.

These guidelines will refer to conciliation and mediation, as ways to help the parties reach an agreement. They will be understood as alternative dispute resolution systems, which complement the use of arbitration.

The two main systems referred to in these guidelines – mediation and conciliation – do not exclude other methods the parties could agree to implement in any particular situation.

## DEFINITIONS

### 1. Mediation

Mediation is a negotiation carried out with the assistance of a neutral third party –the mediator– who does not have the authority to give an award or to impose a decision on disputing parties. The mediator acts as a facilitator, just helping them to reach an agreement.

### 2. Conciliation

Conciliation is a process in which the neutral third party –the conciliator– not only attempts to motivate the parties toward a final settlement, but also could be asked to give the parties a non-binding opinion. This opinion will remain confidential and will not affect the subsequent arbitration.

### 3. Arbitration

Arbitration is a process in which each side presents its case to an arbitration tribunal for a final and often binding decision.

### 4. Termination of the mediation or conciliation process

Mediation and conciliation come to an end when:

Parties reach an agreement. A letter signed by both parties and addressed to the National Association charged of the process shall state that agreement.

- a) Parties don't reach an agreement. Any of the parties shall declare it by a letter addressed to the National Association charged of the process.
- b) The mediator or conciliator considers – in his sole judgment – the agreement is unattainable. It shall be stated by a letter addressed to the National Association charged of the process.

# GUIDELINES FOR CONCILIATION AND MEDIATION

## ARTICLE 1

All business disputes referred to ISF Rules or to ISF Arbitration may be submitted to conciliation or to mediation.

Conciliation and mediation are consensual and voluntary. The parties are free to voluntarily adopt them or not. None of the parties can be forced to enter into these processes. Once the process is accepted, the parties are not obliged to agree to any terms of settlement that they do not accept of their own free will.

The parties may agree on any procedural subject related to the process. They could choose the National Association who will conduct the process and/or the mediator or the conciliator. They could also set up their own rules under which the process will be conducted. Otherwise, these guidelines shall apply.

## ARTICLE 2

1. The party requesting conciliation or mediation shall apply to the National Member Association in whose country arbitration should take place. If in such country there is no National Association affiliated with ISF or the existing one provides no Conciliation or Mediation services, the application must be sent to the General Secretary of the ISF. In such a case, the General Secretary shall indicate a third country whose National Association could conduct the process.
2. National associations providing mediation and conciliation shall inform the General Secretariat. They shall prepare a list of mediators/conciliators, who should fully enjoy their civil rights and have experience in mediation and/or conciliation.
3. The application shall set out succinctly the purpose of the request and be accompanied with the filing fee. It shall contain a brief statement of the dispute and the names, addresses, and telephone numbers of all parties involved.
4. The National Association in charge of the process shall, as soon as possible, inform the other party of the request for conciliation or mediation. That party will be given a period of ten business days to inform the National Association whether it agrees or refuses to participate in the attempt to conciliate or mediate.

## ARTICLE 3

1. Upon the requested party refusal, the process will be declared terminated. In the absence of any reply within the above-mentioned ten-day period, the request shall be deemed to have been refused. In both cases, the National Association shall, as soon as possible, inform the party which had requested it.
2. When the process is prematurely terminated by the withdrawal of any party, the rights and liabilities of the parties will not have been altered in any way by the aborted procedure.
3. If the requested party agrees to participate, the National Association shall inform the other party and appoint a conciliator or a mediator as soon as possible.
4. No person can serve as a mediator or conciliator if they have any financial or personal interest in the outcome of the process, except by the informed consent of all parties. Prior to accepting an appointment, the prospective neutral third party shall disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting with the parties.
5. Any mediator or conciliator will be barred from serving as witness or arbitrator in subsequent arbitration in case the mediation /conciliation fails to settle the case.
6. If any conciliator or mediator shall become unwilling or unable to serve, the National Association will appoint another neutral third party, unless the parties otherwise agree.

#### ARTICLE 4

1. The conciliator or the mediator shall make their best efforts to assist the parties to reach a settlement. He shall conduct the process as he sees fit, guided by the principles of impartiality, confidentiality, equity and fairness.
2. He will be able to meet or communicate with the parties whenever he thinks appropriate and to conduct joint or separate meetings with them. He may also, at any time during the process, request a party to submit to him the additional information, as he deems necessary, and make oral recommendations for settlement.
3. He shall fix the place for the meetings and propose to the parties a date for the opening meeting. The parties may, if they so wish, be assisted by counsel of their choice and at their own expense.
4. The process will be strictly confidential. Every person who is involved in it shall respect this rule. The parties shall commit not to call the mediator or conciliator as a witness in any subsequent judicial or arbitration proceeding.
5. All records, reports, or other documents received by a mediator while serving in that capacity shall be strictly confidential. So shall be the opinion of the conciliator.
6. The parties agree not to introduce in any judicial or arbitration proceeding as evidence –or in any manner whatsoever– any views expressed or suggestions made by any party during the process. This obligation shall include, among others, any proposal put forward by the mediator, any opinion given by the conciliator and/or any fact admitted by a party.

#### ARTICLE 5

1. The process shall come to an end when the parties reach an agreement. It shall remain confidential unless they otherwise agreed. Nevertheless, the confidentiality shall be deemed to be resigned when the execution of the agreement is required. The financial and other obligations falling upon the parties should be fulfilled within 30 days that follow the reached agreement. If not fulfilled, the parties have the right to lodge the application for arbitration within 30 days.
2. The process shall also come to an end when the parties agree on that or when any of them declares his or her intention of not pursuing it anymore. Such statement does not need to be accompanied by reasons.
3. The conciliator and the mediator are authorized to end the process whenever –in their sole judgment– further efforts would not contribute to a resolution of the dispute.

#### ARTICLE 6

If the process comes to an end for any reason except an agreement between the parties, the parties will have the right to go to arbitration, provided that they apply for at the relevant arbitration chamber within the time limit provided for in Article 89 of the 1994 edition of the FIS Rules and Usages for the Trade in Seeds for Sowing Purposes.

#### ARTICLE 7

1. The case filing or set-up fee is SFr. 5,000 or the equivalent amount in another currency. This fee is to be borne by the requesting party, when the request is filed with the National Association.
2. Additionally, the mediator or conciliator may fix the deposit at a higher amount that must be paid within the time mentioned in the notification of the increased amount. The parties will pay this deposit, including the filing fee, equally, unless they otherwise agreed. In addition, value added taxes are to be charged when applicable.

# B. Arbitration Procedure Rules

## ORGANIZATION OF THE ARBITRATION

### ARTICLE 1

1. In conformity with ISF Articles of Association, member associations shall organize facilities for conducting arbitration according to ISF Rules and Usages for the Trade in Seeds for Sowing Purposes and to these ISF Arbitration Procedure Rules. If there is more than one member association in a given country, they shall agree on the establishment of only one Arbitration Chamber.

Member associations may alternatively designate an Arbitration Chamber in the country of their choice.

2. Arbitration shall take place under the control of the appropriate national member association of ISF. That member association may charge an Arbitration Chamber with the organization of the arbitrations or it may organize them itself. In the latter case, it is considered under these Rules, an Arbitration Chamber.

3. Each member association shall inform the General Secretariat if it organizes arbitrations itself or if it charges an Arbitration Chamber with the arbitrations. If the member association decides to provide the facilities for conducting dispute settlements, it must deposit a list of arbitrators, and the modifications thereof, at the General Secretariat of the Federation.

If the national association charges an Arbitration Chamber with the organization of arbitrations, it shall inform the General Secretariat of ISF of the name and address of the Arbitration Chamber which it has designated to conduct arbitrations in its country in accordance with the Rules and Usages of ISF and the present Rules of Procedure.

4. Each Arbitration Chamber shall prepare a list of at least 8 arbitrators in its country. The arbitrators should fully enjoy their civil rights, and occupy or have occupied a position of official representative in seed companies or organizations in which they have been employed, or they should carry out or have carried out responsibilities which give them a reputation in the professional milieu.

Only arbitrators appearing on this list can be appointed to Arbitration Committees.

An arbitrator employed by a company that has not fulfilled its obligations arising from arbitration award and to which the Secretary General has applied art. 18 shall be considered ineligible to serve.

5. Countries having decided to have a joint arbitration chamber may establish a joint list of arbitrators.

6. The possibility to have arbitration will be suspended in countries from which the ISF Secretariat has not received the list of arbitrators on request. This information will be indicated on the ISF website.

## APPLICATIONS FOR ARBITRATION

### ARTICLE 2

1. Applications for arbitration, as well as all other correspondence concerning the arbitration, must be prepared in eight copies and must be sent by registered mail<sup>1</sup> to the Arbitration Chamber of the seller's country. The Arbitration Chamber will send a copy to the ISF General Secretariat. If that Arbitration Chamber is not the member association, it will have to send a copy of the application to

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<sup>1</sup> Wherever "registered mail" is indicated, it means "registered mail with acknowledgement of receipt". Notifications of the hearings may be made by fax if both parties agree upon. They shall immediately acknowledge receipt.

the member association of the relevant country, so that it can take on the responsibilities of paragraph 1.1, as well as a copy to the General Secretariat.

2. If there is no national association affiliated to ISF in the seller's country, or if that association has not yet organized itself as an Arbitration Chamber, or has not yet charged an Arbitration Chamber with the responsibility of administering arbitration for the association, the application for arbitration must be addressed to the Secretary General of ISF. The Secretary General shall select a third country, if possible geographically near the seller's country, whose national association is affiliated with ISF, where arbitration shall take place. That association must agree to organize the arbitration.

3. The application must contain:

- a. full name, first and last, profession and address of the applicant,
- b. full name, first and last and address of the other party.
- c. the arbitrators may require an official copy of the inscription of both parties in the Register of Business Names or of Companies, if they are registered.
- d. precise summary of the points in dispute and the object of the application.

4. The documents to be attached to the application are the original and six copies or photocopies of the contract concluded by the parties as well as the original and six copies or photocopies of the other documents on which a party wishes to base its application and which it wishes to use in its support.

5. If an application does not comply with the above requirements, the Arbitration Chamber may grant the applicant an additional period of time, which in no case may exceed 30 days, to complete the application.

6. Applications for arbitration must be made to the Arbitration Chamber within the time limit specified in the ISF Rules and Usages for the Trade in Seeds for Sowing Purposes in force at the time of the arbitration, on penalty of the application being nullified, except in special cases at the discretion of the arbitrators.

## **DEPOSIT**

### **ARTICLE 3**

1. In order to guarantee the payment of the arbitration costs a deposit in convertible currency to the equivalent of Swiss Francs 5,000 must be paid to the Arbitration Chamber at the time of making the application.

2. The arbitrators or the Arbitration Chamber may fix the deposit at a higher amount, which must be paid within the time mentioned in the notification of the increased amount<sup>2</sup>.

3. If the deposit requested by the arbitrators has not been remitted within this period of time, the application will be considered as withdrawn. The Arbitration Chamber shall inform the other party accordingly.

## **NOMINATION OF THE ARBITRATORS**

### **ARTICLE 4**

1. Once the requirements of articles 2 and 3 of these rules have been complied with, the Arbitration Chamber shall send by registered mail

- to the defendant, copy of the application and the documents joined;

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<sup>2</sup> It must be noted that the cost of arbitration may differ depending whether the selling company is or is not a member of the national association of its country. Indeed some associations have different arbitration costs for members and non-members.

- to the two parties, the list of arbitrators referred to in art. 1.4.
- 2. Each party shall nominate one arbitrator within the 15 working days following receipt of the list of arbitrators. If that nomination is not made within the prescribed time limit, the Arbitration Chamber shall nominate the missing arbitrator(s).
- 3. The third arbitrator shall be nominated by the Arbitration Chamber.
- 4. In accepting nomination to the Arbitration Committee, each arbitrator must agree in writing to be bound by the Code of Ethics for Arbitrators in Part D to these Procedure Rules. Otherwise, a replacement arbitrator shall be nominated in accordance with paragraphs 2 and 3 above.
- 5. The Arbitration Chamber shall notify as soon as possible, by registered mail, the two parties of the composition of the Arbitration Committee.

## **CHALLENGE OF ARBITRATORS**

### ARTICLE 5

1. An arbitrator can be challenged under the law of the country in which the arbitration is to be held.
2. If a party wishes to challenge an arbitrator, he or she must, within eight working days following receipt of the composition of the Arbitration Committee, submit a reasoned written request to the competent Arbitration Chamber.
3. The decision as to whether or not the challenge is justified shall be given after consideration of the reasons by the Arbitration Chamber.
4. If the challenge is accepted, the party who nominated the challenged arbitrator shall nominate a new arbitrator by registered mail within 15 working days after notification that the challenge has been accepted.

## **THE ARBITRATION PROCEDURE**

### ARTICLE 6

1. The Arbitration Chamber shall, by registered mail, inform the two parties of the time and place of the hearing. That information must reach the parties at least 15 working days prior to the hearing. Unless in case of force majeure, the hearing shall take place within the two months following the nomination of the arbitrators at the latest.
2. The Arbitration Chamber shall invite the parties to attend the hearing.
3. However, no oral hearing is necessary if the parties and the Arbitration Committee so agree.
4. Arbitrators may decide by themselves or at the well reasoned request recognized as justified of one of the parties, that the parties shall present their case in writing prior to the hearing; where appropriate, the provisions of art. 2 apply.
5. The Arbitration Chamber may designate a secretary to attend the sessions.
6. It is the arbitrators' responsibility to draw up the award.
7. The arbitrators may, if necessary, hold several sessions. They must inform the parties or their representatives in writing of their decision to do so. The arbitrators can inform the parties orally that a further session will be held during a hearing at which all parties are present.
8. The arbitrators may authorize the parties to bring or to summon witnesses or experts, and they may summon witnesses or experts themselves.
9. All discussions of the dispute shall take place and oral statements be made at a formal session.
10. All communications between parties and the arbitrators outside the hearings shall be in

writing. Any such communication from a party shall be sent to each other party to the arbitration and to each of the arbitrators. Any such communication from an arbitrator shall be sent to each party to the arbitration and to each of the other arbitrators.

11. The Arbitration Chamber must send to each party a copy of all written statements.

#### ARTICLE 7

1. The parties may attend the hearing personally or may be represented by members of their own or another member association of ISF or by a duly accredited proxy. Subject to the provisions of art. 6, par. 4, each party may put forward a further explanation of his case during the hearing and may reply to the further explanation of the other party.

2. At the request of arbitrators the parties must supply all the details and information regarding the arbitration. They must also comply with requests made by the arbitrators.

3. If a party does not comply with their requests, arbitrators may, when giving their award, draw such conclusions as seems appropriate to them.

#### ARTICLE 8

If one of the parties has not supplied within the specified time explanations and samples asked for by the third arbitrator, or if he does not appear at the hearing, the award will be given on the basis of available documents.

### COUNTERCLAIMS

#### ARTICLE 9

1. The respondent is entitled to make a counterclaim against the claimant, provided this claim arises from the same contract as the original claim.

2. A counterclaim must be made to the Arbitration Chamber within 15 days after receipt of the original application for arbitration referred to in art. 4.1 on penalty of being inadmissible save in exceptional cases at the discretion of the arbitrators.

### WITHDRAWAL OF THE ARBITRATION AND SETTLEMENT

#### ARTICLE 10

1. An arbitration may be withdrawn by claimant, in writing. In the absence of Arbitration Chamber rates, the following rates shall apply:

- a. if an arbitration is withdrawn before arbitrators have started their work, applicant will be required to pay in convertible currency an equivalent of Swiss Francs 500 plus any expenses, which may already have been incurred;
- b. if the Arbitration Chamber has already summoned the other party in accordance with art. 6, the claimant will be required to pay in convertible currency an equivalent of Swiss Francs 1,000 plus any expenses, which may already have been incurred;
- c. if an arbitration is withdrawn on the day fixed for the hearing, but before the meeting of the Committee, the claimant will be required to pay in convertible currency an equivalent of Swiss Francs 1,500 plus any expenses, which may already have been incurred;
- d. if an arbitration is withdrawn at or after the first hearing, the applicant will be required to pay the full arbitration costs.
- e. The amounts given in art. 10.1 are valid at the date of adoption of the present rules. The Board of Directors of ISF may modify those amounts from time to time. The General Assembly shall be informed.

2. Once, the defense has been presented, the arbitration cannot be withdrawn, unless the other party either verbally at the hearing or in writing after the hearing declares that he assents to the withdrawal.
3. The amounts mentioned in the first paragraph of this article are doubled in appeal cases.
4. The amounts due on account of the withdrawal of the arbitration shall be set against the deposit referred to in article 3.
5. If in the course of the arbitration a settlement is reached, the arbitration shall be terminated by a report in writing, signed by the arbitrators and by the parties and shall contain a note of the date and place of the settlement and a decision as to the apportionment of the costs. The report of a settlement must be sent to the parties by registered letter.

## **AWARD**

### ARTICLE 11

1. The arbitrators shall make their award to the best of their knowledge and belief in accordance with the International Seed Trade Federation Rules and Usages for the Trade in Seeds for Sowing Purposes and any other conditions, which may have been agreed by the parties to the contract and without favour to either party.
2. The arbitrators shall give their award within three months after the day on which the first hearing was held.
3. The arbitrators shall, however, be authorized to extend their term of office by periods of two months at a time if there are in their opinion exceptional circumstances requiring such an extension.
4. The arbitrators shall reach their decision by a majority vote.
5. The arbitration award shall contain:
  - a. the names of the parties,
  - b. the names of the arbitrators who have given the award,
  - c. a description of the matter in dispute,
  - d. a statement of the facts, the decision and the ground for the decision,
  - e. the amount of the costs and who is to pay them,
  - f. the place and the date of the award,
  - g. the binding signatures of the arbitrators,
  - h. and all other information necessary for the validity of the award in the country where it has been given.
6. The arbitrators shall draw up the award in such a way that it complies with the provisions of the Conventions of Geneva and New York (see Annexes I and II).
7. Arbitration awards which have not been the subject of appeal and appeal awards are legally binding on the parties and are enforceable.
8. The arbitrators shall make their award in at least five signed copies. The Arbitration Chamber shall send, as soon as possible and not later than two months after the award was made, one copy to each of the parties by registered mail, to the General Secretariat of ISF and to the national association(s) of the country of arbitration if the arbitration has been made by an external Arbitration Chamber. One copy shall be used to satisfy the legal requirements of the country where the arbitration was held, another copy staying in the files of the Arbitration Chamber.

## **APPEAL**

### **ARTICLE 12**

1. Each party may lodge an appeal against the award by registered mail to the General Secretariat of ISF. That appeal must be lodged not later than one month after acknowledgment of receipt of the award indicated in article 11.8. The period of one month is controlled by the post mark of the sending of the application for appeal by registered mail. The appeal application shall have attached the documents indicated in article 2.4.
2. If the party against whom the award has been given lodges an appeal he must furnish or remit within the time indicated by the General Secretariat a security to guarantee that the award of the first instance will be implemented. This security must be furnished or remitted to the national association affiliated to ISF of which the other party is a member and if such an organization does not exist, to the General Secretariat of ISF. That security shall consist either of a deposit of the amount, or an irrevocable banker's guarantee, for a minimum period of 12 months, of the amount awarded, except if the parties agree on another form of guarantee.
3. An appeal deposit in convertible currency to the equivalent of Swiss Francs 5000 must be remitted to the General Secretariat of ISF within the time limit fixed by the Secretary General. That deposit is put at the disposal of the association charged with the appeal. The Arbitration Tribunal or the Arbitration Chamber may fix the deposit at a higher amount. The increase must be paid within the time mentioned in the notification.
4. After notification of the appeal award, if it confirms the first instance award, the national association referred to in paragraph 2 or the General Secretariat of ISF shall put the security at the disposal of the winning party. If the appeal award invalidates or modifies the first instance award, if the security has been furnished in cash, the surplus, if any, must be immediately reimbursed to the party which has furnished the security.
5. The appeal award shall contain the elements indicated in article 11.5.

### **ARTICLE 13**

1. The Secretary General of ISF shall charge a national association affiliated to ISF with the hearing of the appeal. This association cannot decline to organize the arbitration. This association must be neither the association of the appellant's nor the respondent's country nor the country where the arbitration of the first instance has been heard.
2. The appeal arbitrators give a final decision both formally and materially.
3. The appeal shall be heard by at least three arbitrators designated by the Arbitration Chamber dealing with the case.
4. The arbitrators who have been arbitrators in the first instance shall not be appeal arbitrators.
5. The language in which the documents must be worded shall be decided by the General Secretariat of ISF.
6. As well as the provisions of this article, articles 5 to 11 of these rules are similarly applicable.

## **APPEAL AWARDS**

### **ARTICLE 14**

Extracts of appeal awards, without revealing the names of the parties, may be published by the General Secretariat of ISF.

## **ARBITRATION COSTS**

### **ARTICLE 15**

1. The arbitrators shall fix the arbitration costs.
2. The arbitration costs shall generally be for the account of the party declared in default.
3. The arbitrators may, however, at their discretion, apportion the arbitration costs between the two parties.
4. If the party who is declared in default has before the first hearing offered the other party in writing an amount which is equal to or higher than the amount awarded by the arbitrators, increased by the amount due on the withdrawal of the arbitration, the costs of the arbitration shall be charged to the other party.
5. In appeal cases, the arbitrators also decide on the arbitration costs of the first instance. The arbitration costs of both instances shall generally be for account of the party declared in default. Paragraph 3, however, remains applicable.

#### ARTICLE 16

1. As far as the arbitration costs are due to the Arbitration Chamber or to ISF, they shall as far as possible be recovered out of the amount paid by the claimant to the Arbitration Chamber or to the General Secretariat of ISF.
2. The Arbitration Chamber or the General Secretariat of ISF may ask that an additional amount be paid during the arbitration.
3. If a party has already paid arbitration costs, the award shall provide to what extent they will be reimbursed to him.

#### ARTICLE 17

The arbitration costs payable to the Arbitration Chamber or to ISF may consist of:

- a. costs and expenses of the Arbitration Chamber, of ISF, of the arbitrators or of the secretary.
- b. the fees of the arbitrators and the secretary.

#### ARTICLE 18

1. The financial and other obligations falling upon the parties should be fulfilled within 30 days that follow the receipt of the award.
2. For an award of the first instance, its implementation is suspended in case of appeal by one party. The Secretariat shall immediately inform the other one. If there is no appeal, the party that has won the award can demand enforcement according to the rules of the New York Convention.
3. For an appeal award, the deadline cannot be extended and if not implemented, the party that has won the award can demand enforcement according to the rules of the New York Convention.
4. When one of the parties has not fulfilled his obligations arising from a final ISF arbitration award, the other party shall report the default to the General Secretariat of ISF. An award shall be considered final for purposes of notification in accordance with this Article after all ISF administrative appeals have been exhausted or the time for filing such appeals has expired. The General Secretariat of ISF then shall, in turn, after appropriate verification<sup>3</sup>, notify all the members.

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<sup>3</sup>In order to make an appropriate verification, ISF Secretariat will request a signed statement from an officer of the prevailing party to the effect that the award has not been fulfilled. That signed statement shall be sent by ISF Secretariat to the losing party by registered mail, offering that party an opportunity to explain or otherwise respond to the alleged failure to comply, and notifying the losing party that, in the absence of an acceptable response, that can be only *force majeure*, the allegation that it has failed to honour the award will be presumed to be correct and said failure will be published. A registered letter sent to the correct address and not accepted or not collected by the addressee is considered as received and the procedure will continue.

The member associations are required to inform all their other members. The General Secretariat of ISF and the member associations shall expressly indicate that this information does not prevent the possibility of exercising other judicial appeals. If one of the parties or both parties have informed the ISF Secretariat that they have sought judicial review in any court of competent jurisdiction before sending the notification, then the Secretary General, and in turn, the member associations, will indicate in the notification that a judicial review is pending. The Secretary General will notify all the members of the judicial decision, upon request of one of the parties.

5. When a member of an association affiliated with ISF or any other member of ISF has not fulfilled its obligations arising from a final ISF arbitration, that member will be immediately barred from participating in any ISF activities and congresses.

#### ARTICLE 19

Subject to any special written agreement to the contrary the provisions of these rules are binding on the parties.

#### ARTICLE 20

The Arbitration Chamber, the arbitrators, the member associations and the General Secretariat of ISF shall in no way be liable towards the parties for any damage whatsoever arising from the application of these rules.

### **EXPEDITED PROCEDURE<sup>4</sup>**

#### ARTICLE 21

1. The expedited procedure is an arbitration procedure including due hearing of the parties, expeditious and simplified, to facilitate and accelerate the recovery of small money claims that qualify as being unquestionable, liquid and due.

That procedure may be applied for when money claim has a contractual ground and does not exceed in principal the amount of Sfr. 100,000. - (or the equivalent in another currency as of the date of the arbitration claim), not including damages and/or indemnities.

2. Written application for arbitration shall be sent in four copies to the Arbitration Chamber defined in Art. 2. The Arbitration Chamber will send immediately one copy to the other party and one copy to the General Secretariat.

Every application shall be accompanied by the deposit required in Art. 3 of the present Rules.

The application shall state:

- the names and addresses of the creditor and of the debtor
- the precise amount being claimed together with a detailed account of the various components of the money claim as well as the grounds of said claim.

It is obligatory that the application be accompanied by relevant papers and by a copy of the agreement having given rise to the money claim and mentioning the arbitration clause or indicating that the sale was effected according to ISF Rules.

3. The Arbitration Chamber:

- notifies the other party that an application has been received;
- nominates an arbitrator of the list of arbitrators as defined in Art. 1. The parties shall be informed by fax of the nomination of the arbitrator who may be subject to challenge as specified in Art. 5.2.

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<sup>4</sup> All exchanges under the expedited procedure shall be made by fax or telephone and confirmed in writing.

If the challenge is accepted, the arbitration chamber shall nominate a second arbitrator and then, possibly, a third arbitrator. That third nomination shall be final.

4. Unless decided otherwise by the Arbitration Tribunal, additional claims shall not be admitted. To be admissible, any counterclaim must be lodged within 5 days from the notification of the application for arbitration. This delay elapsed, the Arbitration Chamber will invite the counter claimer to lodge his case in an initial claim under an arbitration procedure independent from the procedure already engaged.

5. The arbitrator shall fix the date, time and place of the hearing. This information is notified by the arbitration chamber to both parties, by fax, at least 14 days prior to the date of the hearing. This information shall be confirmed in writing.

6. If a hearing is organized,

- no document or additional paper shall be deposited by the claimant between the date of his arbitration claim and the opening of the hearing;
- the defendant is invited to deposit his file at the latest two working days before the hearing, either in original or in copy form. In this latter case original documents have to be available for submission at the hearings.

If the parties decide that there would be no hearing and that the arbitrator could found his decision on documents only,

- no document or additional paper shall be deposited by the claimant between the date of his arbitration claim and the date of the decision taken by the arbitrator;
- the defendant shall be informed by the arbitrator of the deadline for sending his file in original.

7. Award

If, after a hearing or upon examination of the documents that have been supplied out, the claim appears to the arbitrator as being partially or totally substantiated, the arbitration tribunal shall make an award ordering the payment of the money claim for the amount it considers as justified.

If the claim appears to be unsubstantiated or the materials produced reveal, for whatever reason, that it is necessary to further investigate the case, the arbitration tribunal shall dismiss as such the whole or part of the payment claim and invite the claimant to refer it to the arbitration chamber, should the occasion arise, under the ordinary proceedings provided for in its Rules of Procedure. In such case, it is incumbent on either party to lodge an arbitration claim with the arbitration chamber, which will rank on the day of its registration.

The award, once notified to the parties, is final and removed the case from the arbitrator.

Article 18 applies to that award.

8. Duration of the arbitration.

The duration of the mandate of the arbitration tribunal ruling under the expedited procedure is of two months from the date of the formal recording of its acceptance to sit.

By authority of the parties, in pursuance of the provisions herein, the President of the arbitration chamber may, on his own initiative and if he thinks fit, extend the mandate of the arbitrator for one month.

# **C. Mediation, Conciliation and Arbitration for Disputes between Professionals Concerning the Management of Intellectual Property Rights in the Field of Plant Breeding**

## **PRELIMINARY REMARKS**

The International Seed Federation (hereinafter ISF), having as members plant breeders and holders of rights under patents for biotechnological inventions, should be capable by mediation, conciliation or arbitration organized by itself or delegated elsewhere, of helping to find a solution to the disputes which are submitted to it by people or legal entities who work as collaborators with the business of creating intellectual property rights or in the field of grants, transfers or management of these rights.

These mediation, conciliation and arbitration rules are binding only on those people or legal entities who wish to refer to them under an arbitration clause accepted by the parties or included in the contract by which they are bound. This clause must state that each of the contracting parties accepts to submit any claims to mediation, conciliation or arbitration by the ISF.

If the contract includes a ISF arbitration clause concerning property rights, the parties shall agree to submit to the same unless they find another solution beforehand, which has arisen from mediation or conciliation which each of them has accepted or applied.

## **GLOSSARY OF TERMS**

For the purposes of these rules, Arbitration Tribunal is the group of persons designated to deal an arbitration case.

Arbitration Chamber is a private or public entity specialized in providing alternative dispute resolution systems, mainly arbitration, and organizing them with legal and administrative facilities. The arbitration Chamber organizes, helps and hosts the tribunals dealing with the concrete cases.

## **FIELD OF APPLICATION FOR MEDIATION, CONCILIATION AND ARBITRATION CONCERNING INTELLECTUAL PROPERTY RIGHTS**

### **ARTICLE 1**

With respect to intellectual property rights this ISF arbitration clause can settle those disputes occurring within the framework of implementation or interpretation of a contract linking the parties, either for setting up research and sharing the income derived from this research, or within the framework of implementation or interpretation of the clauses of a license to use an intellectual property right. This ISF rules can also be used to settle any other dispute on intellectual property rights provided that the parties agree. In the absence of an agreement between the parties in question, this clause cannot apply, particularly within the framework of penal or civil litigation concerning counterfeit use of intellectual property rights, whether for plant certificates or for patents concerning the legal protection of biotechnological inventions.

## **RULES FOR MEDIATION, CONCILIATION AND ARBITRATION**

### **ARTICLE 2**

a) Depending on what is chosen by the parties and successively if necessary, the ISF shall provide mediation, conciliation and arbitration by organizing them or possibly creating an Arbitral Tribunal.

The ISF may delegate mediation, conciliation or arbitration between the parties to an arbitration Chamber, when such an arbitration Chamber has been organized.

b) In the countries where mediation, conciliation and arbitration are to take place, the existing national association will control the application thereof, and if it so wishes, may choose an existing arbitration Chamber for this mission.

c) If the ISF association member does not exist in the country in question, or for various reasons cannot or does not wish to organize or delegate arbitration, the ISF Secretary General, authorized by the Board of Directors, may with the agreement of the parties appoint an arbitration Chamber in another country. If this is not possible or if one party refuses, the Arbitration Tribunal shall be constituted at the registered ISF offices, within three months after the date on which the national solution has been found to be impossible, or on which the parties refused it.

In the event that member associations of ISF delegate the case to a duly constituted national arbitration Chamber, they must inform ISF of this.

d) The conciliators or arbitrators who are chosen and appointed at national or international level and according to the various situations described above, shall be expressly selected from the member Societies and organizations of the national association or direct members of ISF. Each member association shall draw up a list of the arbitrators it proposes.

Each direct member Society of ISF shall also designate an arbitrator, if this has not been possible at national level. This list shall be kept at the disposal of the arbitration Chamber thus designated together with the General Secretariat of ISF. Members of the association or national associations which are members of ISF can set up an Arbitral Tribunal or ask the Secretary General of ISF to organize it in their place.

e) If there is no national arbitration Chamber, when an Arbitration Tribunal is set up at national level or at ISF level, it must arrange for:

- Choice of an arbitrator appointed from the lists communicated to each of the parties in question;
- Choice of the President of the Arbitration Tribunal selected either by the two arbitrators appointed by the parties, or by the Secretary General authorized by the ISF Board of Directors.

If the parties in question fail to appoint arbitrators or are unable to agree on the appointment of the third party arbitrators who are to preside the Arbitration Tribunal, the Secretary General authorized by the ISF Board of Directors shall appoint the missing arbitrator(s) together with the President within 30 days of the date on which this failure is noted.

Each party may refuse an arbitrator or the third party arbitrator for reasons that he must specify, supported by proof to support his statement. Final appointment of the arbitrators shall in this case be the responsibility of the Secretary General authorized by the ISF Board of Directors.

These arrangements do not replace the various arbitration Chamber rules for procedures, which must be fulfilled.

It must be noted that the arbitrators are appointed as judges for the case and shall in no case act as representatives pleading for the parties during arbitration.

f) Mediation and conciliation.

1. If the parties accept this, they can have recourse to the services of a mediator or person appointed to conciliate the parties, with both the mediator and the conciliator appointed either jointly by the parties from the list of experts in the country concerned, or in the absence of agreement between the parties, by the Secretary General authorized by the ISF Board of Directors.

It is reminded that the mediator is responsible for defining a point of view liable to enable the parties to accept the proposition formulated, whereas the role of conciliation is to enable the parties to come to agreement on the dispute between them, and in so doing terminate all procedures on the

subject.

If there is no agreement concerning the mediator's proposal or the conciliator's mission, the parties must resort to arbitration within 30 days.

2. For mediation or conciliation, the time limits for lodging a request for arbitration are suspended from the date that mediation or conciliation is accepted, until the date that failure of the mediator's or conciliator's mission is noted, as proved by a statement of failure.

## **REQUEST FOR ARBITRATION**

### **ARTICLE 3**

If mediation or conciliation fails to result in agreement of the parties and if the applicant party wishes to proceed further, he must lodge a request for arbitration with the Arbitration Chamber of the country of the claimant, putative owner of the intellectual property rights, within thirty working days after the failure report and date of notification of the same.

If there is no national arbitration Chamber or if it refuses to organize arbitration, the application must be sent to the Secretary General of ISF who, authorized by the Board of Directors, will entrust arbitration to a country with an arbitration Chamber or will accept to set up an Arbitral Tribunal.

In order to guarantee the payment of the arbitration costs, a deposit of an amount equivalent to SFr 5,000 must be paid to the arbitration Chamber or to the ISF Secretariat at the time of making the application.

a) If arbitration is requested, the applicant party must make this request to the arbitration Chamber or ISF General Secretariat if there is no arbitration Chamber in the country concerned, and send a copy to the other party involved. In addition this request must specify the title and address of the applicant party, the title and address of the other party, and describe in detail the facts which are subject to dispute and which motivate the request, together with all the documents enabling the arbitrators to assess the claim.

This request and the various documents must be supplied in accordance with the specifications required or the rules for procedure for the Arbitration Chamber in the country concerned, if there are any, or else supply four copies of all of them to the ISF General Secretariat when the Board of Directors is in charge of organizing the Court.

In every case, the principle of fair hearing with possibility of defense and confrontation of witnesses and evidence must be applied. Each party must either send a copy of all the files to the opposing party, or request the arbitration Chamber to do so, if it usually does this itself.

b) If a request for arbitration does not fulfill all the conditions specified above when the request is made, the arbitration Chamber or the Arbitral Tribunal set up by the ISF may allow a period to complete the file, but in no case may this period exceed 45 days.

c) Cost of arbitration: when there is an arbitration Chamber, in order for the costs to be covered the party applying for arbitration must pay the deposit or provision which he may be asked for. The same will apply if the arbitration Tribunal is set up by the ISF General Secretariat.

## **APPOINTMENT FOR ARBITRATORS**

### **ARTICLE 4**

The arbitrators shall be selected by the parties from the list of experts, which they will be given, by country, either by the arbitration Chamber set up or by the ISF General Secretariat.

The arbitrators must be in full possession of their civil rights and have worked in posts of responsibility in organizations, companies or groups so that they have acquired skills in the subjects with which they would be dealing.

## **CHALLENGE TO THE ARBITRATORS**

### **ARTICLE 5**

As mentioned above, an arbitrator or third party arbitrator may be challenged according to the law and rules for procedure and arbitration in the arbitration Chamber in the country in question, or the legal requirements of the same country.

In accordance with the rules of ethics, the arbitrators appointed can be challenged if there is any link of subordination or dependence with one or the other of the parties.

The decision as to whether this objection is founded or not, which must be sent by registered mail with acknowledgement of receipt either to the arbitration Chamber of the country, or to the Arbitration Tribunal, shall be made either by the arbitration Chamber or by the Secretary General authorized by the ISF Board of Directors after studying the file lodged complete with the motivations for the objection, and the decision made by them concerning the upholding or refusal of this objection shall be supreme.

The decision by the arbitration Chamber or by the ISF Secretary General is without appeal.

## **ARBITRATION PROCEDURES**

### **ARTICLE 6**

The parties are deemed to be aware of the arbitration Chamber arbitration procedures.

The ISF tribunal procedures are given in the document entitled "ISF Arbitration Procedure Rules" to which must be added the ISF "Code of Ethics for Arbitrators".

If there is no arbitration Chamber or national procedure, the Secretary General, authorized by the ISF Board of Directors, may set up an Arbitral Tribunal and communicate the place and day and time of debates and the composition of the Tribunal, by registered letter at least 15 days in advance.

On its own initiative the Tribunal will hear the parties who may be assisted by their counsels, will involve them in the debates and will then deliberate in private.

The arbitration decision shall be drawn up under the responsibility of the arbitrators who may hear and command all witnesses to appear during a formal session in the presence of both parties.

Access to the arbitration hearing sessions is limited to members of the Arbitral Tribunal, the Secretary responsible for assisting the Tribunal, and the two parties assisted by their counsels.

The debates are supposed to be oral and to give a fair hearing. Each party can present their opinion on different points of view by means of statements and replies.

After the hearings the Tribunal shall hand down its ruling under the responsibility of the arbitrators. The judgment is the result of a majority of votes and shall be notified to the parties in question.

Awards by the arbitration Chambers which are not subject to any appeal, or arbitration judgments at the 2nd degree shall be lodged with the competent office of the clerk of the courts by the party which took the initiative, and by the same right the parties can entrust the Arbitration Tribunal which handed down the award to do the same. The award can only be lodged with the office of the clerk of the courts once it has become final.

## **APPEAL**

### **ARTICLE 7**

Awards by the arbitration Chambers may be the subject of an appeal.

Appeal procedure shall be the same as provided for in articles 12 and 14 of the ISF Arbitration Procedure Rules.

## **LOGGING THE FILES**

### **ARTICLE 8**

As described above, the parties must lodge their files, replies and statements with as many copies as there are arbitrators in the Tribunal, together with one to be sent to the arbitration Chamber in question.

## **APPEARANCE IN ARBITRATION TRIBUNAL AND REPRESENTATION**

### **ARTICLE 9**

The parties may appear in person before the arbitration Tribunal, or be represented by a duly authorized representative. They can be assisted by counsel.

Legal counsels only, by which is meant barristers or attorneys duly registered with the Bar or the association which they are members of, are not obliged to prove their principal/agency relationship if the documents they produce in the case confirm their role as representative.

If although duly summoned, the defendant does not appear or is not represented, produces no argument nor document, the Arbitration Tribunal may proceed with arbitration based solely on the elements which it has available.

## **SITTING AND PROCEEDINGS OF THE HEARINGS**

### **ARTICLE 10**

Arbitration hearings may take place in the premises of the designated arbitration Chamber or in any other place if the Arbitration Tribunal accepts this unanimously.

## **INVESTIGATION MEASURES**

### **ARTICLE 11**

In addition to the files and elements of information transmitted to them by the parties, the arbitration tribunals have wide-ranging powers to search for information on which to base their judgment.

Nevertheless they are bound to comply with the principles of a fair hearing and those elements derived from application of national and international rights together with the measures governing the exercising of these rights at national level.

## **EXPEDITED PROCEDURE**

### **ARTICLE 12**

When arbitration is requested, an application for an expedited procedure for urgency can be made.

This treatment must respect the rules for procedure of the arbitration Chamber in question, if such exists, and must be subject to decision by the ISF Secretary General authorized by the Board of Directors.

If there are no rules for such a procedure, the decision handed down by the Secretary General of ISF is without appeal.

## **ARBITRATION COSTS**

### **ARTICLE 13**

The costs of arbitration will be allocated after the decision by the arbitration Tribunal who can charge the costs to the party who loses or allocate them as it sees fit.

In every case and in particular with respect to the arbitration Chambers set up, the applicant remains the guarantor for the arbitration costs allowed for in the Rules governing arbitration Chambers.

These arbitration costs become definitely and totally due to the arbitration Chamber once the case has been summoned.

When an Arbitral Tribunal has been appointed by the Secretary General authorized by the ISF Board of Directors, the arbitrators assess their arbitration costs by a majority vote.

## **PUBLICATION OF THE AWARD**

### **ARTICLE 14**

If a party does not carry out the award, the other party may ask for enforcement according to the rules of the New York Convention. The Secretary General of ISF shall inform all those involved in the ISF that the award has not been carried out.

## **RESPONSIBILITY OF THE ARBITRATION TRIBUNAL**

### **ARTICLE 15**

In accordance with normal practice, no action may be taken by the parties for any damage whatsoever under application or execution of the present mediation, conciliation or arbitration procedures, whether against the arbitrators, the arbitration Chambers or the associations which are members of the ISF administrative authorities.

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## D. Code of Ethics for Arbitrators

The recourse to arbitration or other alternative methods for the settlement of litigation such as conciliation and mediation are very common in commercial matters. People who act as arbitrators, conciliators or mediators therefore undertake serious responsibilities to the public as well as to the parties. These responsibilities are partly dealt with in the ISF Arbitration Procedure Rules. However, some of them concern ethical obligations. The Rules of Ethics are described in the present Code. They don't substitute themselves and are not to be opposed to the rules described in the substance of the text.

### Canon I

*An arbitrator should uphold the integrity and fairness of the arbitration process.*

- A. In no case shall arbitrators act as lawyers of one of the parties.  
Though two of the arbitrators are chosen by the parties from a list proposed by the arbitration tribunal, they don't represent the interests of the parties who have chosen them. During the entire duration of the procedure they have to remain neutral and impartial and conduct themselves as judges and not as lawyers of one of the parties. They shall not let themselves be influenced by any outside pressure, by the fear of being criticized and by personal interests.
- B. Persons should accept appointment as arbitrators only if they believe that they can be available to conduct the arbitration promptly. They should make all reasonable efforts to avoid dilatory tactics, harassment of the parties or other participants, or other damages or disruption of the arbitration procedure.
- C. After accepting appointment for a case and while serving as an arbitrator for this case, a person should avoid entering into any relationship, or acquiring any interest, which is likely to affect impartiality or which might reasonably create the appearance of partiality or bias. For a reasonable period of time after the decision of a case, persons who have served as arbitrators should avoid entering in any such relationship, or acquiring any such interest, in circumstances which might reasonably create the appearance that they had been influenced in the arbitration by the anticipation or expectation of the relationship or interest.
- D. Arbitrators should neither exceed their authority or do less than is required to exercise that authority completely. It is the obligation of the arbitrators to comply with the procedures or rules parties have agreed in their contract, i.e. with the procedures laid down in the ISF Procedure Rules and any deviation parties have agreed in their contract.
- E. The ethical obligations of an arbitrator begin upon acceptance of the appointment and continue throughout all stages of the proceedings. In addition, wherever specifically set forth in this Code, certain ethical obligations continue even after the decision in the case has been given.
- F. Arbitrators must sign the Arbitration Award, even if the Award has been taken at the majority (Article 11.4 of the Arbitration Rules) and not at unanimity. The dissenting opinion shall not be indicated in the Award to avoid undue following use.

### Canon II

*An arbitrator should disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality or bias.*

Disclosure:

- A. Persons who are requested to serve as arbitrators should, before accepting, disclose:

- 1) Any direct or indirect financial or personal interest in the outcome of the arbitration;
  - 2) Any existing or past financial, business, professional, family or social relationships which are likely to affect impartiality or which might create an appearance of partiality or bias. Persons requested to serve as arbitrators should disclose any such relationships which they personally have with any party or with his lawyer, or with any individual whom they have been told will be a witness. They should also disclose any such relationships involving members of their families or their current employers, partners or business associates.
- B. Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in paragraph A. above.
  - C. The obligation to disclose interests or relationships described in paragraph A. above is a continuing duty, which requires a person who accepts appointment as an arbitrator to disclose, at any stage of the arbitration, any such interests or relationships which may arise, or which are recalled or discovered.
  - D. Disclosure should be made to all parties and to the other arbitrators.
  - E. These present provisions of the Code are intended to be applied realistically so that the burden of detailed disclosure does not become so great that it is impractical for persons in the business world to be arbitrators, thereby depriving parties of the services of those who might be best informed and qualified to decide particular types of cases.

This Code does not limit the freedom of parties to agree on anyone they choose as an arbitrator. When parties, with knowledge of a person's interests and relationships, nevertheless desire that individual as an arbitrator, that person may properly serve.

### **Canon III**

*An arbitrator should avoid unilateral relationships with one or all parties.*

- A. Unless otherwise provided in an agreement of parties or in the ISF Arbitration Procedure Rules for the International Seed Trade, arbitrators should not discuss a case with any party in the absence of each other party.
- B. Whenever an arbitrator communicates in writing with one party, the arbitrator should at the same time send a copy of the communication to each other party and to the other arbitrators. Whenever an arbitrator receives any written communication concerning the case from one party, which has not already been sent to each other party, the arbitrator should do so. In addition, he should also send this to the other arbitrators.
- C. Arbitrators should offer each other entire faculty to participate in all arbitration modalities.

### **Canon IV**

*An arbitrator should make decisions in a just, independent and deliberate manner.*

- A. An arbitrator should, after careful deliberation, decide all issues submitted for determination. An arbitrator should decide no other issues.
- B. An arbitrator should decide all matters justly, exercising independent judgment, and should not permit outside pressure to affect the decision.
- C. An arbitrator should not delegate the duty to decide to any other person.

## **Canon V**

*An arbitrator should be faithful to the relationship of trust and confidentiality inherent in that office.*

- A. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the arbitration proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of others.
- B. Unless otherwise agreed by the parties, or required by applicable rules or law, an arbitrator should keep confidential all matters relating to the arbitration proceedings and decision. The ISF Secretariat however is entitled to publish awards without disclosing the names of parties, arbitrators and details, which are not required for a good understanding of the case.
- C. It is not proper at any time for an arbitrator to inform anyone of the decision in advance of the time it is given to all parties. It is not proper at any time for an arbitrator to inform anyone concerning the deliberations of the arbitrators. They may however seek advice from experts. After an arbitration award has been made, it is not proper for an arbitrator to assist in any post-arbitration proceedings, except as may be required by law.
- D. In case the arbitration award foresees payment, the arbitrators should scrupulously avoid to haggle with the parties over the amount to be settled or to engage any correspondence concerning payment, which would create an appearance of constraint or improper behavior. It is to the Arbitration Chamber to organize payment in order to avoid the necessity for the arbitrators to enter into direct contact with the parties on that matter.



# Annexes

## IMPORTANT PROVISIONS OF THE CONVENTIONS OF GENEVA AND NEW YORK

### ANNEX I

#### Geneva Convention of 1927

##### ARTICLE 1

To obtain such recognition or enforcement, it shall, further, be necessary:

- a. That the award has been made in pursuance of a submission to arbitration, which is valid under the law applicable thereto;
- b. That the subject matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;
- c. That the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;
- d. That the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to *opposition*, *appel* or *pourvoi en cassation* (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;
- e. That the recognition or enforcement of the award is not contrary to the public policy or to the principles of law of the country in which it is sought to be relied upon.

##### ARTICLE 2

Even if the conditions laid down in Article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the Court is satisfied:

- a. That the award has been annulled in the country in which it was made;
- b. That the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;
- c. That the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if he thinks fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

##### ARTICLE 3

If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is ground, other than the grounds referred to in Article 1.a and c and Article 2.b and c entitling him to contest the validity of the award in a Court of Law, the Court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

## ANNEX II

### New York Convention of 1958

#### ARTICLE V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
  - a. The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the Law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
  - b. The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
  - c. The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matter submitted to arbitration may be recognized and enforced; or
  - d. The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
  - e. The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.
2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
  - a. The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
  - b. The recognition or enforcement of the award would be contrary to the public policy of that country.

#### ARTICLE VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (1) (e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

For information on countries that are parties to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards see <http://www.jurisint.org/cgi-bin/disp.pl/pub/01/en/152.htm>.