

# ANNEX 1 TO THE ARBITRATION RULES

## Designation rules and confirmation of arbitrators



## Article 1. General principles

1. The parties are free to choose all arbitrators by mutual agreement, subject to confirmation by the Center. The Center encourages the parties to exercise this right and to themselves designate not only the co-arbitrators, but also the presiding arbitrator in the case of an arbitral tribunal, or the sole arbitrator if the arbitral body is a one-person tribunal.
2. When, for lack of agreement between the parties, the Center must appoint an arbitrator, it may do so by means of one of its two systems for the appointment of arbitrators: a list drawn up specifically for each case or direct appointment.
3. The following are involved in the procedure for the appointment and confirmation of arbitrators: the Secretary General's Support Committee, the Secretary General and the Arbitrators' Appointment Commission (the "Comission").
4. These bodies shall take into account the following criteria:
  - Main criteria: Candidates must have experience and knowledge appropriate to the complexity and relevance of the particular arbitration. In this context, factors relevant to the case, such as nationality, language, need for specific expertise or experience, and availability, shall be considered.
  - Additional criteria: In addition to the above, other factors may be taken into account, such as the date of the last appointment, age, gender, or the convenience of involving new professionals in the Center's arbitration activity.
5. The submission of the parties to the Rules shall entitle the Center to contact the candidate arbitrators to verify their availability and to check for conflicts of interest and to make the appropriate disclosures regarding their independence and impartiality, in accordance with article 13 of the Rules. Unless otherwise agreed by the parties, the conflict of interest check shall be carried out prior to the preparation of the proposal of candidates to the Commission.
6. Unless there is an agreement of the parties to that effect, the co-arbitrators, if any, who have already been appointed shall not maintain unilateral contacts with the parties with respect to the appointment process.

## **Article 2. Designation by the parties and confirmation procedure**

1. The designation of arbitrators by the parties (or by the co-arbitrators in the case of the presiding arbitrator) shall always be subject to confirmation by the Center, without having to provide reasons.
2. The arbitrators shall make the relevant disclosures within the time limit set by the Center. The parties shall make such submissions as they deem appropriate within the time limit set by the Center.
3. When it is necessary to confirm an arbitrator, the following guidelines shall be followed:
  - a) If the arbitrator designated by the parties has indicated that they have nothing to disclose and the parties have not submitted any arguments within the corresponding time limit, the Secretary General may approve the confirmation of the arbitrator without further delay, if they deem it appropriate.
  - b) In all other cases, the Secretary General shall submit a proposal for confirmation to the Commission, which may approve or deny it.

## **Article 3. Appointment by list system**

1. The system of appointment by list shall be the default system to be applied, except when the system of direct appointment is applicable in accordance with article 4 of this Annex.

### Proposal phase by the Secretary General

2. Unless the parties have agreed otherwise, in accordance with article 1.5 of this Annex, the Center shall contact the candidates in advance to verify their availability and to conduct a conflict of interest check.
3. The number of candidates included in each list to be submitted to the parties (not less than three) shall be decided by the Secretary General on the basis of the circumstances of the case and in accordance with the internal rules for the formation of lists of candidates, which are set forth below.

4. Once the proposal of candidates has been drawn up (which shall contain a minimum of twice the number of candidates to be included in the list to be submitted to the parties), the Secretary General shall submit it to the Commission.

#### Decision phase by the Commission

5. The Commission shall select all the candidates to form the list to be submitted to the parties. The Commission may make a reasoned request to the Secretary General for a new proposal of candidates to complete the list to be submitted to the parties.<sup>1</sup> However, if the Commission needs only one candidate to complete the list, it may select that additional candidate directly, after consultation with the Secretary General and provided that it is approved unanimously by the members present at the vote. In its deliberations, the Commission shall give an order of preference which shall only be disclosed to the parties in the event of a tie among the candidates.

6. Once the members of the list to be submitted to the parties have been chosen, the list shall be sent to the parties, accompanied by any disclosures made by the candidates in accordance with paragraph 2 above.

#### Decision phase by the parties

7. Once the list has been drawn up, it shall be sent to the parties so that, within a period to be determined by the Center, each party may exclude up to one-third of the names proposed<sup>2</sup> and rank the remaining names in order of preference, the first being preferred and the least preferred being the last.

8. When the preferences of the parties are received, the candidate who has obtained the fewest points shall be elected, after adding those of the two lists. In the event of a tie, the candidate with preference in the order given by the Commission according to section 5 above shall be elected.

<sup>1</sup> This will be the case, for example, if the list to be submitted to the parties should include six potential arbitrators but the Commission only considers three of those included in the proposal of candidates to be suitable.

<sup>2</sup> If one-third of the proposed candidates does not result in a whole number (i.e., 1, 2, 3... etc.), the party may exclude up to the next lower whole number of candidates. That is, if the list contained five candidates, since one-third of five is 1.66 but 1.66 candidates cannot be excluded, then the party may exclude only one candidate.

9. In the event that the candidate finally selected is unable to accept the position, the candidate with the same number of points, if any, or the one with the second lowest number of points shall be appointed, and so on. In the event that there are no candidates who can accept the position, the Center shall proceed to submit a new list to the parties, repeating the procedure.

10. The parties may agree to modify the list appointment process as they see fit.

## Article 4. Direct appointment

1. The Center shall apply the direct appointment system in the following cases:

- a) When requested by all parties;
- b) When the case foreseen in article 18.2 of the Rules, regarding plurality of parties and intervention of third parties, occurs;
- c) When the Secretary General, taking into account the circumstances, considers it appropriate, taking into account the following circumstances (open list):
  - One of the parties has failed to designate a co-arbitrator in accordance with article 11 of the Rules.
  - The procedure is abbreviated.
  - The amount in dispute is less than 300,000 euros.
  - One party is in default.
  - The Center must appoint an emergency arbitrator.
  - It is not appropriate to apply the list procedure.

### Proposal phase by the Secretary General

2. Unless the parties have agreed otherwise, in accordance with article 1.5 of this Annex, the Center may contact the candidates in advance to verify their availability and to conduct a conflict of interest check.

3. The Center shall inform the parties of any disclosures made by the prospective arbitrator and shall allow the parties a reasonable time limit to make allegations thereon.

4. The Secretary General shall prepare a proposal of candidates, in accordance with the internal rules for the formation of lists of candidates, as established below, which shall be submitted to the Commission.

#### Decision phase by the Commission

5. The Commission shall appoint one of the candidates and a reserve candidate, or it may request a new proposal of candidates with a reasoned request.

6. In the event that the successful candidate is unable to accept the position, the reserve candidate shall be appointed. In the event that there are no candidates who can accept the position, the Center shall proceed to submit a new proposal to the Commission, repeating the procedure.

### **Article 5. Minutes of the Arbitrators' Appointment Commission**

The decisions of the Arbitrators' Appointment Commission shall be secret, unless expressly waived in writing by the President's Support Committee. Decisions shall be recorded by email sent by the Secretary General, or in their absence by the President, to all the members of the Commission. That email shall be kept on file by the Secretariat of the Center and the Secretary General may issue certificates of its content, with the approval of the President.

### **Internal rules for the formation of candidate lists**

The purpose of this agreement is to regulate the internal procedure for proposals for the appointment of arbitrators by CIAM from the Secretary General's Support Committee and the Secretary General to the Commission -in cases of application of the list or direct appointment systems, as defined in this Annex 1 to the Rules-

## Appointment by list

1. Whenever the system of appointment by list is to be followed, the Secretary General shall prepare, for the Commission, a proposal of potential arbitrators (the "list proposal") previously agreed upon with the Secretary General's Support Committee, with a minimum of twice the number of candidates to be included in the list to be submitted to the parties (the "list").<sup>3</sup>

2. If the Secretary General's Support Committee does not agree on a proposal for a list by consensus, the following procedure shall be followed to form the list:

a) Each Deputy-Secretary shall nominate a minimum number of candidates equal to the number of candidates to be on the list proposal.

b) The Secretary General may exclude up to one-third of the candidates nominated by each Deputy-Secretary. If one-third of the proposed candidates does not result in a whole number (i.e. 1, 2, 3... etc.), they may exclude up to the next lower whole number of candidates.<sup>4</sup> The remaining candidates shall form the list proposal.

c) If, for any reason, the available candidates do not total twice the number of candidates required for the list, the Secretary General, after consultation with their Support Committee, shall select the candidates necessary to complete the proposal of candidates with the required number.<sup>5</sup>

## Direct Appointment

3. Once the proposal for direct appointment has been drawn up and previously agreed upon with the General Secretary's Support Committee, with a minimum of three candidates<sup>6</sup>, the General Secretary shall submit it to the Commission.

4. If the Secretary General's Support Committee does not agree on a proposal for direct appointment by consensus, the following procedure shall be followed to form it:

a) Each Deputy-Secretary shall propose a minimum of two candidates.

b) The Secretary General may exclude one of the two candidates proposed by each Deputy Secretary. The remaining candidates shall form the nomination for direct appointment.

<sup>3</sup> In accordance with article 3 (3) of the Regulations, the number of candidates on the list shall not be less than three.

<sup>4</sup> That is, if a Deputy-Secretary were to propose five candidates, given that one third of five is 1.66 but 1.66 candidates cannot be excluded, in that case the Secretary General could exclude only 1 candidate.

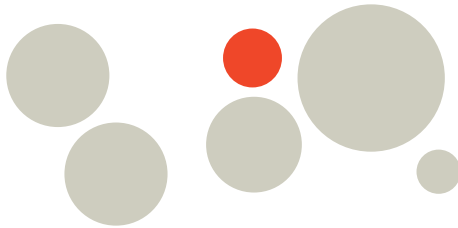
<sup>5</sup> This case may occur if a Deputy-Secretary proposes fewer candidates than requested or does not propose any candidate within the period allowed by the Secretary General for submitting names.

<sup>6</sup> As indicated in Annex 1, the exact number of candidates included in the list to be submitted to the Parties shall be as agreed by the Parties or, failing agreement, as decided by the Secretary General, depending on the circumstances of the case.



c) If, for any reason, the number of candidates in the nomination for direct appointment is less than three, the Secretary General, after consultation with their Support Committee, shall select the candidates necessary to complete the nomination for direct appointment with the corresponding number of candidates.<sup>7</sup>

<sup>7</sup> This case may occur if a Deputy-Secretary proposes fewer candidates than requested or does not propose any candidate within the period allowed by the Secretary General for submitting names.



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