

## **PRELIMINARY EMERGENCY MEASURES ADDITIONAL CLAUSE TO THE TAB RULES OF PROCEDURE**

### **Art. 1 The emergency arbitrator. Definition of functions**

Unless otherwise agreed by the parties, at the request of one of them, and under their sole responsibility, the emergency arbitrator may grant interim measures of protection and preliminary orders of an urgent and provisional nature, fixing, where appropriate, such security as deemed appropriate by the emergency arbitrator.

### **Art. 2 Application for emergency measures**

- 2.1. Any party to an arbitration agreement with submission to the TAB may request the appointment of an emergency arbitrator.
- 2.2. The request shall be filed with the TAB, who shall record the date in the register provided for such purpose, and shall contain the information referred to in Sections a, b, c, d, e, f and g of Article 5.1 of the Rules, in addition to the following information:
  - a) An indication of the emergency measures requested.
  - b) The reasons why the emergency measures requested are necessary and why it is not possible to wait for the appointment of the arbitrator in the proceedings.
  - c) An offer of security sufficient to cover the liabilities that may arise.
  - d) Proof of payment of the administration fees referred to in Article 9 of this Clause.

The applicant may also submit any other document or information that is considered appropriate or that may contribute to the efficient examination of the request.

- 2.3. The request shall be drafted in the language of the arbitration, in accordance with the provisions of Article 18 of the Rules.
- 2.4. These proceedings shall be closed without further action if, within fifteen days of receipt of the request for emergency measures, the request for arbitration provided for in Article 5 of the Rules has not been filed with the TAB.

### **Art. 3 Appointment of the emergency arbitrator**

- 3.1. The President of the TAB shall appoint an emergency arbitrator as soon as possible, normally within three days from the receipt of the request to the TAB. No emergency arbitrator shall be appointed after the acceptance of the arbitrator of the proceedings.

- 3.2. The appointment of the emergency arbitrator shall be made to a person who is on the list, restricted to a maximum of fifteen emergency arbitrators, which shall be displayed on the web page of the institution. In order to be part of this list, the person concerned must apply for it and must meet the requirements set out in Article 11 of the Rules of Procedure for the arbitrators of the procedure, in addition to being a lawyer with proven procedural experience.
- 3.3. The emergency arbitrator shall be and remain impartial and independent of the parties involved in the dispute.
- 3.4. Any person eligible to act as an emergency arbitrator shall sign a declaration of availability and an express undertaking of confidentiality. In addition, he or she shall sign a statement of independence and impartiality within three days of receipt of the file.
- 3.5. An emergency arbitrator who does not accept within the period established in the previous section shall be excluded from the list of emergency arbitrators of the TAB, unless the non-acceptance is duly justified, at the discretion of the TAB.
- 3.6. The emergency arbitrator may not act as arbitrator in any arbitration related to the dispute which has given rise to the request for emergency measures.

#### **Art. 4 Challenge of the emergency arbitrator**

- 4.1. A challenge of an emergency arbitrator must be made in writing within three days after receipt of the first notice informing the party of the appointment of the emergency arbitrator or after the party receives information of the facts or circumstances on which the challenge is based, if such information is of a later date.
- 4.2. The challenge shall be decided by the TAB after the emergency arbitrator and the parties appearing before it have submitted the arguments they deem appropriate within three days of being notified of the challenge.

#### **Art. 5 Obligations of the emergency arbitrator**

- 5.1. Once the emergency arbitrator has been appointed, the TAB shall deliver the file to the emergency arbitrator. From that moment onwards, the emergency arbitrator shall commence the proceedings pursuant to Article 7 Section 1.
- 5.2. The emergency arbitrator shall hear and decide on the objections, oppositions and incidents arising from the requests for emergency measures.
- 5.3. The emergency arbitrator shall cease to perform all functions as soon as the arbitrator of the proceeding accepts to act as arbitrator.

## **Art. 6 Seat of the proceedings**

- 6.1. In the absence of an agreement between the parties on the place of arbitration, the chairman of the TAB shall fix the seat of the emergency arbitrator proceedings, without prejudice to the place of arbitration in accordance with article 17 of the Rules.
- 6.2. Any meeting with the emergency arbitrator may be held telematically or by means of a face-to-face meeting at any place deemed appropriate by the emergency arbitrator.

## **Art. 7 Procedure**

- 7.1. The emergency arbitrator shall be in charge of assessing the adequacy of the security offered by the applicant and of establishing a timetable for the emergency measures procedure in the shortest possible time, normally within three days following the delivery of the file by the TAB.
- 7.2. The emergency arbitrator shall conduct the proceedings in the manner they deem most appropriate, taking into account the nature and urgency of the measures requested, giving the parties the opportunity to assert their rights, in accordance with Article 20 Section 2 of the Rules.
- 7.3. Without prejudice to the provisions of the preceding Section, the emergency arbitrator may adopt interim measures or preliminary orders without first hearing the party affected by the measure. In this case, once the measure has been granted, it shall be immediately communicated to the other party and the latter may challenge it before the emergency arbitrator within three days from the date on which it was communicated to that party.
- 7.4. The emergency arbitrator's decision shall take the form of an order (the Order). In this Order, the arbitrator shall decide whether they have competence to order the measures requested, whether they are admissible in accordance with Art. 36.1 of the Rules, and the reasons on which their decision is based. The Order shall be dated and signed by the emergency arbitrator.
- 7.5. The Order shall be issued and communicated to the parties within fifteen days from the date on which the file was delivered to the emergency arbitrator, unless an extension of this time limit is authorised by the Chairman of the TAB at the request of the emergency arbitrator.
- 7.6. At the request of a party, the emergency arbitrator may modify or lift the agreed measures or replace them with sufficient security in accordance with their opinion and the circumstances of the case.
- 7.7. The Arbitrator may modify, rescind or annul the Order.

## **Art. 8 Lifting of measures taken by the emergency arbitrator**

The measures taken by the emergency arbitrator shall cease to be binding on the parties:

- a) In the event that the requesting party withdraws its request.
- b) In the case provided for in section 2.4 of this Clause with respect to the request for arbitration.
- c) In the event that the TAB accepts the challenge of the emergency arbitrator.

- d) If the party that has requested them does not proceed with the arbitration or does not satisfy the fees and provisions of funds due to it.
- e) If a competent state court orders the discontinuance of the arbitration.
- f) If the emergency arbitrator or the arbitrator of the proceeding renders them totally or partially ineffective.
- g) When the award is rendered, unless otherwise expressly stated therein.

## **Art. 9 Administration rights and cost of the proceedings**

- 9.1. The fees provided for in the Appendix to the Rules, shall not apply to the procedure for preliminary emergency measures, with the exception of sections I and J thereof,
- 9.2. For the conduct of the proceedings, the applicant shall pay an amount of €9,000 (plus VAT), which will cover the fees and costs of administration and the fees and expenses of the emergency arbitrator. With the application for the measures, proof of payment of these fees must be provided in accordance with the terms set out in Section 2.2 of this Clause.
- 9.3. At any time during the procedure for preliminary emergency measures, the chairman of the TAB may decide, by means of a reasoned resolution, to increase the amount of the fee established in the previous section up to a maximum of €18,000 (plus VAT), taking into consideration, among other things, the nature of the case, its complexity and the nature and amount of work of the TAB and of the emergency arbitrator. Failure to pay this increased fee within the time limit set by the TAB shall be considered as a withdrawal of the application for the measures.
- 9.4. The Order of the emergency arbitrator shall fix the cost of the emergency relief proceedings, including the reasonable expenses incurred by the parties and shall decide which party is to pay them or in what proportion they are to be apportioned between them.
- 9.5. In the event that, after the application has been filed, the emergency measures procedure terminates earlier before the Order is made, the President of the TAB shall determine the amount to be reimbursed to the applicant, if any. In any case, the amount of 4,500€ (plus VAT) for TAB administration fees is not refundable under any circumstances.

## **Art.10 General rule**

- 10.1. In these proceedings only one person shall be appointed as emergency arbitrator.
- 10.2. This Clause supplements and takes precedence over the rest of the provisions of the Rules of the TAB.
- 10.3. In the absence of the President of the TAB or at the request of the same, the decision-making powers of the President provided for in this Clause shall be exercised on an interim basis by one of the persons occupying one of the two Vice Presidencies, who shall act at the election of the President or, failing this, alternatively.

This Additional Clause to the Rules of the TAB, regarding preliminary emergency measures, was adopted in Barcelona on 8<sup>th</sup> March 2022.