

INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION

# YEARBOOK

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# CHAMBER OF NATIONAL AND INTERNATIONAL ARBITRATION OF MILAN\*

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## THE NEW ARBITRATION RULES OF THE ARBITRATION CHAMBER OF MILAN

*Rinaldo Sali\*\**

### *Introduction*

The Chamber of National and International Arbitration of Milan<sup>1</sup> has adopted new arbitration rules, which entered into force on 1 January 2004 (the Rules).<sup>2</sup> The previous revision of the rules dated back to 1996 and followed the 1994 reform of Italian arbitration law.<sup>3</sup> The new amendments, however, take into consideration the practice of recent years. The main objective of the amendments of the arbitration rules is to improve the quality of the arbitral

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1. The Arbitration Chamber of Milan is a special body of the Milan Chamber of Commerce. Its website is [www.camera-arbitrale.com](http://www.camera-arbitrale.com).

2. In addition to the Italian, the new rules are also available in the English and French languages.

3. Law n. 25 of 5 January 1994, "New Provisions Relating to Arbitration and Regulation of International Arbitration," incorporated in Arts. 806-840 of the Italian Code of Civil Procedure. The Arbitration Rules of the Arbitration Chamber of Milan in force as of 1 May 1996 are reproduced in Yearbook XXI (1996) pp. 247-264.

proceedings as a whole, i.e., proceedings that are efficient, transparent and of a reasonable length. This objective implies the following principles:

- (i) the confirmation of the absolute freedom for the parties to appoint arbitrators. The institution seeks a minimal intervention in the appointment of arbitrators but a maximal control of their independence;
- (ii) the precise indication of a model of flexible procedural rules providing the arbitrators with various options;
- (iii) the acceleration of the proceedings with new powers granted to the bodies of the Chamber to that effect;
- (iv) the transparency and predictability of the arbitration costs.

Therefore, the amendments mainly relate to seven matters: the form of the Rules, the allocation of the functions among the bodies of the Arbitration Chamber, the rules applicable to the proceedings, the commencement of the proceedings, the Arbitral Tribunal, the arbitration costs and the award.

#### 1. Formal Amendments

The main formal amendment consists in the adoption of a single set of rules. Previously, two sets of rules coexisted: the National Rules and the International Rules. Two elements have weighed in favor of the adoption of a single set: the fact that the prior division existed more for marketing purposes than for legal reasons (there was a limited number of different provisions between the National and International Rules), and the spirit of the Italian Code of Civil Procedure's reform which seemed to tend towards a unification of the discipline extending to domestic arbitration the favorable provisions applicable to international arbitration.

The second formal amendment worth noticing is the gathering under one heading — General Provisions<sup>4</sup> — of articles formerly scattered throughout the rules.

In the section on the standard arbitration agreements, the Rules propose a new model arbitration clause to be included in the articles of incorporation or by-laws

4. Under this heading are the Arts. 1 to 9, related to the general aspects of the arbitral procedure, such as the rules applicable to the proceedings and to the merits, the seat and the language of the arbitration, and the time limits.

of Italian companies. This amendment takes into account the provisions of the new Italian Corporate Law, which entered into force on 1 January 1994.<sup>5</sup>

Finally, the Code of Ethics of Arbitrators is presented and organized differently, without significant amendments to the substance.

#### 2. The Amendments Related to the Organization of the Arbitration Chamber

The Arbitration Chamber of Milan is composed of two bodies: the Arbitral Council and the Secretariat. The Arbitral Council, which is composed of a President, six members and two foreign experts, has functions comparable to those of the International Court of Arbitration of the International Chamber of Commerce in Paris. The Secretariat mainly acts as the secretariat of the Arbitral Council and performs its tasks through a Secretary General, a Deputy Secretary General and delegated officers. The allocation of the functions between the two bodies was modified in order to increase the efficiency of the arbitral proceedings. For example, under the previous rules, the Arbitral Council had to confirm the arbitrators it had not directly appointed.<sup>6</sup> Henceforth, the Rules provide that the Secretariat confirms directly the arbitrators appointed by the parties or the two party-appointed arbitrators whose statement of independence was filed without remarks and in the absence of comments thereto from the parties.<sup>7</sup> This provision enables a faster constitution of the Arbitral Tribunal in cases where the intervention of the Arbitral Council is not required.

In brief, the Arbitral Council focuses its activity mainly on the appointment of arbitrators, the control of their independence, and — especially during the phase prior to the constitution of the Arbitral Tribunal — on the resolution of the most complex procedural objections and questions related to the admissibility of the arbitral proceedings.<sup>9</sup> In this respect, the Rules limit the Arbitral Council's scope of intervention to this preliminary question of admissibility, whereas previously it was possible to raise before the Council objections related to the existence and validity of the agreement.<sup>10</sup> Lastly, in cases of urgent

5. Law n. 5 of 17 January 2003.

6. Art. 5.3 (c) of the National and International Rules.

7. Art. 19.4 of the Rules.

8. For the cases where the Arbitral Council shall appoint the arbitrators), see Arts. 15 and 16 of the Rules.

9. See Art. 13 of the Rules. The Council decides in light of Art. 1 of the Rules entitled "Scope of Application".

10. See Sect. 2 of the Preamble on the Arbitral Council and Art. 1.2 of the National and International Rules.

matters, the President of the Arbitral Council is vested with the power to take the required measures with no need to call upon the whole Council." This new provision can prove to be of particular use when the time limit for the filing of the award is about to end and the Tribunal wishes an immediate extension.

The Secretariat deals with the ordinary administration of the proceedings. The major new tasks conferred to the Secretariat are the following:

- a. the extension, for justified reasons, of some time limits prior to the constitution of the Tribunal: time limits to file the statement of defence and counterclaim (Arts. 11.1 and 12.2) and time limits for the arbitrators to constitute the Arbitral Tribunal (Art. 24.2);
- b. the setting of time limits, if not already specified, for the common appointment of a sole arbitrator by the parties (Art. 15.3) or of the President by the co-arbitrators (Art. 15.4 (b));
- c. the suspension of the proceedings for justified reasons (Art. 36.3) or in the specific cases where an arbitrator is replaced (Art. 21.2) or in the absence of payment (Art. 42.2);
- d. the declaration of the conclusion of the proceedings after two months of suspension for failure to pay (Art. 42.3).

### 3. *The Rules Applicable to the Proceedings*

The hierarchy of the norms applicable to the proceedings was "reversed": henceforth, the Rules are the first source of the applicable norms, followed by the rules agreed upon by the parties and, where the Rules and the parties are silent, by those of the arbitrators (Art. 2.1). Previously, the National Rules provided for the application of the Code of Civil Procedure in the first place, followed by the rules agreed upon by the parties, then the institutional rules and those of the arbitrators.<sup>12</sup>

### 4. *The Commencement of the Proceedings*

The Rules set forth a five working-day time limit for the Arbitration Chamber to notify the following acts as from their filing: the request for arbitration (Art. 10.3), the defendant's statement of defence (Art. 11.3) and the claimant's reply

11. See Sect. 8 of the Preamble on the Arbitral Council. The Council meets once a month.

12. Art. 13.1 of the National Rules. The International Rules provided for the same hierarchy with no reference to the rules of the Code of Civil Procedure (Art. 1S. 1).

if the defendant has made counterclaims (Art. 12.3). Above all, it is a question of transparency vis-a-vis the parties; moreover, this five-day deadline prevents the institution from being responsible for any potential time-bar or foreclosure which may occur between the filing of the request and the forwarding of the act.

### 5. *The Arbitral Tribunal and its Powers*

The following provisions are introduced in the Rules:

- a. four situations of "institutional" incompatibility to be appointed as arbitrator (Art. 17(a), (c), (d) and (e)),<sup>13</sup> the criteria of subparagraphs (a), (c), (d) and (e) are added to the criteria of subparagraph (b), the only one which had been mentioned in the old rules;
- b. the specification of a peremptory time limit to raise objections to the jurisdiction of the Tribunal (Art. 22);<sup>14</sup>
- c. the possibility for the arbitrators to issue an order of resignation, rather than an award, when there was an irregular appointment of the Arbitral Tribunal (Art. 23);
- d. a thirty-day time limit as from the receiving of the introductory acts forwarded by the Secretariat for arbitrators to constitute the Tribunal (Art. 24.2);
- e. the possibility for the Tribunal to be constituted on the sole basis of minutes dated and signed by the arbitrators with no need for a hearing to that purpose (Art. 24.3).

The latter three provisions contribute to the speeding up of the proceedings. Amongst the other provisions related to the Tribunal's powers, it is worth noting that the Tribunal shall always reply in writing to new claims which are admissible under the conditions set forth at Art. 30, and if filed before the Tribunal closes the evidence-taking phase and asks the parties to file their final submissions (Art. 31.3). With respect to this final phase of the proceedings, the Rules offer the arbitrators several options: they can, if they deem it necessary or if one party so

13. In addition to the members of the Arbitral Council, the following persons may not be appointed as arbitrators: the members of the Board of the Chamber of Arbitration, the auditors of the Chamber, the professional partners and employees of the above-mentioned persons, and the employees of the Chamber of Arbitration.

14. The objection must be raised in the first act of the defendant (most likely, the statement of defence), or, if the defendant has not appeared yet, at the first hearing.

requests, ask the parties to file final statements, statements in reply and schedule a final hearing (Art. 31.2).

#### 6. *The Costs of the Proceedings*

The Secretariat determines the value of the dispute on the basis of the new criteria indicated in Annex A to the Rules (Art. 39.2). In accordance with the new Art. 39.3 of the Rules, the Secretariat can divide the value of the dispute in relation to the claims of each party and request from each party the payments relating to these claims. Therefore, when one party fails to pay, the proceedings are suspended, and possibly concluded, for the requests of the defaulting party only (Arts. 42.2 and 42.3). The Arbitral Council makes the final determination of the costs of the proceedings, except in situations where there is a settlement before the constitution of the Arbitral Tribunal, in which case the Secretariat is responsible for the determination (Art. 40.3). The fees, calculated on the basis of the value of the dispute, have been increased taking into consideration the schedule of fees in force in other international arbitral institutions.

#### 7. The Arbitral Award

The Rules expressly introduce a practice which had already been initiated by the Secretariat earlier regarding the formal control of draft awards (Art. 34.4). The examination consists of checking the presence of the formal requirements under Art. 34.1 (and of any other possible requirement of the law applicable to the proceedings). However, there is no control on the merits and it is only performed upon the request of the Tribunal. It constitutes, therefore, a "softer" version of the "scrutiny of the award" of the ICC of Paris.

Regarding the deliberation of the award, the Rules incorporate a provision of the previous International Rules allowing the arbitrators to deliberate without meeting in person, provided the applicable procedural law permits it. The time limit for the filing of the award remains unchanged (six months as from the constitution of the Tribunal, Art. 36.1). However, it is now possible for the Secretariat to directly consent to an extension of the time limit if the parties so agree; in the other cases, the Arbitral Council is competent (Art. 36.2).

To sum up, the new rules constitute a dynamic model offering a larger number of services. The main objective is to prevent the arbitration from being blocked in a rigid framework, and to give the parties and the arbitrators a greater set of

options. It is then up to the institution, with the help of the tools provided by the Rules, to ensure that the parties and their counsel do not abuse the system with dilatory measures and obstructionist techniques.

## ARBITRATION RULES

*Entry into force 1 January 2004*

### STANDARD ARBITRATION AGREEMENTS

#### *Introduction*

*For parties who wish to refer a dispute arising under a contract or other act to institutional (administered) arbitration, the following arbitration agreements — arbitration clauses and submission agreement — are recommended.*

*The Chamber of National and International Arbitration of Milan can assist professionals, companies and other users in drafting these agreements: <[www.camera-arbitrale.com](http://www.camera-arbitrale.com)>*

#### *Clause for sole arbitrator*

All disputes arising out of this contract shall be settled by arbitration under the Rules of the Chamber of National and International Arbitration of Milan. The Arbitral Tribunal shall consist of a sole arbitrator appointed pursuant to those Rules.

#### *Clause for Arbitral Tribunal*

All disputes arising out of this contract shall be settled by arbitration under the Rules of the Chamber of National and International Arbitration of Milan. The Arbitral Tribunal shall consist of three arbitrators; each party shall appoint an arbitrator and the two arbitrators so appointed shall agree on a chairman. If no agreement can be reached, the Chamber of Arbitration shall appoint the chairman.

#### *Clause for multi-party arbitration*

All disputes arising out of this contract shall be settled by arbitration under the Rules of the Chamber of National and International Arbitration of Milan. The

Arbitral Tribunal shall consist of a sole arbitrator/three arbitrators appointed by the Chamber of Arbitration, independent of the number of the parties.

*Clause for international arbitration*

All disputes arising out of this contract shall be settled by arbitration under the Rules of the Chamber of National and International Arbitration of Milan. The Arbitral Tribunal shall consist of a sole arbitrator/three arbitrators appointed pursuant to those Rules.

The Arbitral Tribunal shall decide in accordance with the rules of law of... (or: ex aequo et bono).

The seat of the arbitration shall be .....

The language of the arbitration shall be .....

*Submission agreement*

The undersigned..... and ..... considering that a dispute has arisen between them concerning

agree that this dispute be settled by arbitration under the Rules of the Chamber of National and International Arbitration of Milan. The Arbitral Tribunal shall consist of a sole arbitrator/three arbitrators appointed pursuant to those Rules.

(Date)

(Signature) (Signature)

PREAMBLE -THE CHAMBER OF ARBITRATION

*Tasks and bodies of the Chamber of Arbitration*

1. The Chamber of National and International Arbitration of Milan, an entity of the Chamber of Commerce of Milan, performs the following tasks:

- a. it administers arbitral proceedings under these Rules;
- b. at the request of the parties, it appoints arbitrators in proceedings not administered under these Rules;
- c. it administers arbitral proceedings under the Arbitration Rules of the United Nations Commission for International Trade Law (Uncitral);

d. at the request of the parties, it appoints arbitrators in accordance with the Uncitral Rules.

2. The Chamber of Arbitration performs the tasks provided for in these Rules through the Arbitral Council and the Secretariat.

*The Arbitral Council*

1. The Arbitral Council has general competence over all matters relating to the administration of arbitral proceedings and issues all orders relating thereto, without prejudice to the Secretariat's competences under these Rules.

2. The Arbitral Council is composed of a President and six members, one being the deputy president, appointed for four years by the Board of the Chamber of Arbitration.

3. The Board of the Chamber of Arbitration may appoint a maximum of two foreign experts to the Arbitral Council, in addition to the members in paragraph 2.

The meetings of the Arbitral Council are chaired by its President or, in his absence, by his deputy or, if both are absent, by its oldest member.

4. The meetings of the Arbitral Council are valid where half of its members plus one are present.

5. The meetings of the Arbitral Council may be held by videoconference.

6. The Arbitral Council deliberates by majority of the members present. In case of deadlock, the vote of the meeting's chairman shall prevail.

7. In urgent cases, the President of the Arbitral Council may take measures relating to the administration of arbitral proceedings that are within the competence of the Arbitral Council and inform the Arbitral Council thereof at the next following meeting.

*The Secretariat*

1. The Secretariat performs the tasks indicated in these Rules and issues all related orders. The Secretariat further:

- a. acts as the Arbitral Council's secretariat, taking minutes of the Council's meetings and signing the Council's orders;
- b. reports to the Arbitral Council on the progress of arbitral proceedings;
- c. forwards the orders of the Arbitral Council and its own orders to the parties and to the Arbitral Tribunal, as well as to any other addressee;
- d. receives from the parties and the Arbitral Tribunal all the written acts and documents;
- e. creates and maintains the dossiers of the arbitral proceedings;

- f. forwards notices at the request of the Arbitral Council and the Arbitral Tribunal;
- g. issues certified copies of acts and documents at the request of the parties, as well as declarations and certificates relating to the arbitral proceedings.

2. The Secretariat performs its tasks through the Secretary General, the deputy Secretary General or its thereto delegated officers.

#### I-GENERAL PROVISIONS

##### *Article 1 — Scope of application*

1. These Rules shall apply where the arbitral clause or other agreement between the parties provides that they shall apply. A reference in the agreement to the Chamber of Arbitration of Milan or to the Chamber of Commerce of Milan shall be deemed to provide for the application of these Rules. 2. Further to paragraph 1, these Rules shall apply where:

- a. a party files a signed request for arbitration proposing arbitration under these Rules;
- b. the other party accepts this proposal by a signed statement within the time limit set by the Secretariat.

##### *Article 2 — Rules applicable to the proceedings*

1. The arbitral proceedings shall be governed by these Rules, subordinately by the rules agreed upon by the parties, further subordinately by the rules set by the Arbitral Tribunal.

2. Mandatory provisions that are applicable to the arbitral proceedings shall always apply.

3. The principle of due process and equal treatment of the parties shall always be complied with.

##### *Article 3 — Rules applicable to the merits of the dispute*

1. The Arbitral Tribunal shall decide on the merits of the dispute in accordance with the rules of law unless the parties expressly provided that the Tribunal decide *ex aequo et bono*.

2. The Arbitral Tribunal shall decide in accordance with the rules chosen by the parties in the arbitration agreement or subsequently until the Arbitral Tribunal is constituted.

3. In the absence of an agreement pursuant to paragraph 2, the Arbitral Tribunal shall choose the rules with which the subject matter of the dispute has its closest connection.

4. In any case the Arbitral Tribunal shall take into account trade usages.

##### *Article 4 — Seat of the arbitration*

1. The parties shall determine the seat of the arbitration in their arbitration agreement.

2. In the absence of such determination, the seat of the arbitration shall be Milan.

3. Notwithstanding the provision in paragraph 2, the Arbitral Council may determine a different seat of the arbitration, either in Italy or abroad, taking into account the requests by the parties and any other circumstance.

4. The Arbitral Tribunal may decide that hearings or other procedural acts take place in a location other than the seat.

##### *Article 5 — Language of the arbitration*

1. The language of the arbitration shall be agreed upon by the parties in their arbitration agreement or subsequently until the Arbitral Tribunal is constituted.

2. In the absence of an agreement by the parties, the Arbitral Tribunal shall determine the language of the arbitration. The Secretariat shall indicate the language of acts precedent to that determination.

3. The Arbitral Tribunal may accept the submission of documents in a language other than the language of the arbitration and may order that they be translated into the language of the arbitration.

##### *Article 6 — Filing and sending of acts*

1. The parties shall file acts and documents with the Secretariat as follows: one original for the Chamber of Arbitration and one for each party, plus as many copies as there are arbitrators. The Secretariat shall indicate the number of copies where the number of arbitrators has not yet been determined.

2. Unless otherwise provided by these Rules, the Secretariat shall send notices to the parties, arbitrators, expert witnesses and third parties by registered mail or by any other appropriate means allowing for a formal proof of delivery.

##### *Article 7 — Time limits*

1. The expiry of a time limit set by these Rules or by the Arbitral Council, Secretariat or Arbitral Tribunal shall not cause the related right to lapse, unless so determined by these Rules or by the order setting the time limit.

2. The Arbitral Council, Secretariat and Arbitral Tribunal may extend a time limit they have set before it expires. Time limits that entail lapse of right may be extended only for serious reasons or by agreement of all parties.

3. The initial day shall be excluded from the calculation of time limits. Where the date of expiry falls on a Saturday or a holiday, it shall be extended to the first subsequent working day.

*Article 8 — Confidentiality*

1. The Chamber of Arbitration, the Arbitral Tribunal and the expert witnesses shall keep all information relating to the proceedings confidential.

2. The award may be published only with the prior written consent of the parties to the Chamber of Arbitration.

*Article 9 — Arbitration governed by Italian law*

1. Where Italian law applies, the arbitration shall be "*rituale*" unless the parties determined it to be "*irrituale*" in their arbitration agreement.

2. Where the arbitration is based on an arbitral clause in the act of incorporation or founding or in the by-laws of a company and, in derogation of any provision in that clause, the Arbitral Council shall appoint all the members of the Arbitral Tribunal; it shall appoint a sole arbitrator where it deems it appropriate and the clause does not provide for a panel.

II - COMMENCEMENT OF THE PROCEEDINGS

*Article 10 — Request for arbitration*

1. The claimant shall file a request for arbitration with the Secretariat.

2. The request shall be signed by the party or by its counsel with power of attorney and shall contain or be accompanied by:

- a. the names and domiciles of the parties;
- b. a description of the dispute and claims and an indication of their economic value;
- c. the appointment of the arbitrator or all necessary indications as to the number of arbitrators and the manner of their selection;
- d. the evidence, if any, in support of the claim and all documents that the party deems appropriate to enclose;

e. all indications, if any, as to the rules applicable to the proceedings, the rules applicable to the merits of the dispute or the ex aequo et bono decision, the seat and the language of the arbitration;

f. the power of attorney to counsel, if already appointed;

g. the arbitration agreement.

3. The Secretariat shall forward the request for arbitration to defendant within five working days of the filing. At the request of claimant, the Secretariat shall forward the request through a bailiff. Claimant may forward the request for arbitration directly to defendant, provided that the request is also filed with the Secretariat.

*Article 11 — Statement of defence*

1. The defendant shall file its statement of defence with the Secretariat within thirty days of receiving the request from the Secretariat. The Secretariat may extend this time limit for justified reasons.

2. The statement shall be signed by the party or by its counsel with power of attorney and shall contain or be accompanied by:

- a. the name and domicile of defendant;
- b. a (summary) description of its defence;
- c. the appointment of the arbitrator or all necessary indications as to the number of arbitrators and the manner of their selection;
- d. the evidence, if any, in support of the statement of defence and all documents that the party deems appropriate to enclose;
- e. all indications, if any, as to the rules applicable to the proceedings, the rules applicable to the merits of the dispute or the ex aequo et bono decision, the seat and the language of the arbitration;
- f. the power of attorney to counsel, if already appointed.

3. The Secretariat shall forward the statement of defence to claimant within five working days of the filing. At the request of defendant, the Secretariat shall forward the statement through a bailiff. Defendant may forward the statement of defence directly to claimant, provided that the statement is also filed with the Secretariat.

4. Where defendant does not file a statement of defence, the arbitration shall proceed in its absence.

*Article 12 — Counterclaim*

1. Defendant may file counterclaims with its statement of defence, indicating their economic value.

2. In case of counterclaim by defendant, claimant may file a reply with the Secretariat within thirty days of receiving the statement of defence. The Secretariat may extend this time limit for justified reasons.

3. The Secretariat shall forward the reply of claimant to defendant within five working days of the filing.

*Article 13 — Admissibility of the arbitral proceedings*

1. Where a party objects to the application of these Rules before the Arbitral Tribunal is constituted, the Arbitral Council shall decide on the admissibility of the arbitration.

2. The decision of the Arbitral Council that the arbitration is admissible shall not be binding on the Arbitral Tribunal.

## III - THE ARBITRAL TRIBUNAL

*Article 14 — Number of arbitrators*

1. The Arbitral Tribunal shall consist of a sole arbitrator or a panel of an uneven number of arbitrators.

2. In the absence of an agreement by the parties as to the number of the arbitrators, the Arbitral Tribunal shall consist of a sole arbitrator. The Arbitral Council may refer the dispute to a panel of three arbitrators if it deems it appropriate because of the complexity or economic value of the dispute.

3. Where the arbitration agreement provides for an arbitral panel but does not indicate the number of arbitrators, the Arbitral Tribunal shall consist of three arbitrators.

4. Where the arbitration agreement provides for an even number of arbitrators, the Arbitral Tribunal shall consist of that number of arbitrators plus one.

*Article 15 — Appointment of arbitrators*

1. The arbitrators shall be appointed in accordance with the rules established by the parties in the arbitration agreement.

2. Unless otherwise agreed in the arbitration agreement, the sole arbitrator shall be appointed by the Arbitral Council.

3. Where the parties have agreed on the common appointment of the sole arbitrator without indicating a time limit therefor, this time limit shall be set by the Secretariat. If the parties fail to reach an agreement, the sole arbitrator shall be appointed by the Arbitral Council.

4. Unless otherwise agreed in the arbitration agreement, the arbitral panel shall be appointed in the following manner:

a. Each party shall appoint an arbitrator in the request for arbitration and the statement of defence, respectively; if a party fails to do so, the arbitrator shall be appointed by the Arbitral Council.

b. The President of the Arbitral Tribunal shall be appointed by the Arbitral Council. The parties may, however, provide that the President be appointed by common agreement of the two arbitrators appointed by the parties. If the two arbitrators fail to reach an agreement within the time limit indicated by the parties or set by the Secretariat where the parties have not indicated it, the President shall be appointed by the Arbitral Council.

5. Where the parties have different nationalities or are domiciled in different countries, the Arbitral Council shall appoint as sole arbitrator or President of the Arbitral Tribunal a person of a nationality other than that of the parties, unless otherwise agreed by the parties.

*Article 16 — Appointment of arbitrators in multi-party arbitration* Where the request for arbitration is filed by or against several parties, the Arbitral Council shall appoint all the members of the Arbitral Tribunal, notwithstanding a different provision in the arbitration agreement, if any; it shall appoint a sole arbitrator where it deems it appropriate and the arbitration agreement does not provide for a panel. However, where the parties form into two groups at the outset and each group appoints an arbitrator, as if the dispute were between two parties only, and accepts that the Arbitral Tribunal consist of three members, the Arbitral Council shall appoint only the President.

*Article 17 — Incompatibility*

The following persons may not be appointed as arbitrators:

- a. the members of the Board of the Chamber of Arbitration;
- b. the members of the Arbitral Council of the Chamber of Arbitration;
- c. the auditors of the Chamber of Arbitration;
- d. the employees of the Chamber of Arbitration;

e. the professional partners and employees of the persons sub a, b and c and all who have an ongoing cooperative professional relationship with those persons.

*Article 18 — Acceptance by arbitrators*

The Secretariat shall give notice of their appointment to the arbitrators. Within ten days of receiving this notice, the arbitrators shall give notice of their acceptance to the Secretariat.

*Article 19 — Statement of independence and confirmation of arbitrators*

1. When giving notice of their acceptance the arbitrators shall submit their statement of independence to the Secretariat.

2. The arbitrator shall indicate in the statement of independence:

- a. any relationship with the parties or their counsel which may affect his impartiality and independence;
- b. any personal or economic interest, either direct or indirect, in the subject matter of the dispute;
- c. any prejudice or reservation as to the subject matter of the dispute as well as the time and duration of the above.

3. The Secretariat shall forward a copy of the statement of independence to the parties. Within ten days of receiving the statement, each party may file written comments with the Secretariat.

4. After expiry of the time limit in paragraph 3, the arbitrator shall be confirmed by the Secretariat if he has filed a statement of independence without considerable qualifications and the parties file no comments thereto. In any other case, the Arbitral Council shall decide on the confirmation.

5. Where necessary due to supervening facts or at the request of the Secretariat, the statement of independence shall be repeated in the course of the arbitration until its conclusion.

*Article 20 — Challenge of arbitrators*

1. Each party may file a reasoned challenge against the arbitrators on any ground that casts a doubt on their independence or impartiality.

2. The challenge shall be filed with the Secretariat within ten days of receiving the statement of independence or of becoming aware of the ground for challenge.

3. The Secretariat shall forward the challenge to the arbitrators and the other parties and set a time limit for filing comments, if any.

4. The Arbitral Council shall decide on the challenge.

*Article 21 — Replacement of arbitrators*

1. An arbitrator shall be replaced by another arbitrator where:

- a. he does not accept his appointment or resigns after accepting it;
- b. he is not confirmed;
- c. the Arbitral Council accepts the challenge against the arbitrator;
- d. the Arbitral Council removes the arbitrator for violation of the duties of the Arbitral Tribunal under these Rules or on other serious grounds;
- e. he dies or is no longer able to perform his tasks due to infirmity or other serious grounds.

2. The Secretariat may suspend the proceedings in any of the cases in paragraph 1.

3. The new arbitrator shall be appointed by the same entity that appointed the arbitrator who is being replaced. If the replacing arbitrator must also be replaced, the new arbitrator shall be appointed by the Arbitral Council.

4. The Arbitral Council shall determine the fees, if any, due to the arbitrator who has been replaced, taking into account the work done and the ground for replacement.

5. In case of replacement of the arbitrator, the new Arbitral Tribunal may decide that all or some of the acts in the proceedings be repeated.

*Article 22 — Lack of jurisdiction of the Arbitral Tribunal*

An objection of lack of jurisdiction of the Arbitral Tribunal shall be raised in the first act or at the first hearing following the request to which the objection refers, under pain of expiry.

*Article 23 — Irregular appointment of the Arbitral Tribunal*

Where the Arbitral Tribunal deems that its members have been appointed in violation of a mandatory provision applicable to the proceedings or these Rules, it shall issue a reasoned order that all acts be returned to the Chamber of Arbitration, thereby giving notice that all members of the Arbitral Tribunal have resigned.

## IV-THE PROCEEDINGS

*Article 24 — Constitution of the Arbitral Tribunal*

1. The Secretariat shall forward the request for arbitration and the statement of defence to the arbitrators, together with all annexed documents, when the advance payment is made.

2. The arbitrators shall constitute the Arbitral Tribunal within thirty days of receiving the acts and documents forwarded by the Secretariat. The Secretariat may extend this time limit for justified reasons.

3. The constitution of the Arbitral Tribunal shall be formalized in minutes dated and signed by the arbitrators, indicating the seat and language of the arbitration and establishing the modalities and time limits for further proceedings.

4. Where arbitrators are replaced after the Arbitral Tribunal has been constituted, the Secretariat shall forward the acts and documents of the proceedings to the new arbitrators. The new Arbitral Tribunal shall be constituted pursuant to paragraphs 2, 3 and 4.

*Article 23 — Powers of the Arbitral Tribunal*

1. At any moment in the proceedings, the Arbitral Tribunal may attempt conciliation between the parties.

2. The Arbitral Tribunal may issue all urgent and interim measures of protection, also of an anticipatory nature, that are not prohibited by mandatory provisions applicable to the proceedings.

3. Where multiple proceedings are pending before the Arbitral Tribunal, the Tribunal may order that they be consolidated, if it deems them to be objectively connected.

4. Where the same proceedings concerns several disputes, the Arbitral Tribunal may order that these disputes be separated.

5. The Arbitral Tribunal may take all measures that are deemed necessary to correct or supplement the parties' representation or legal assistance.

*Article 26 — Orders of the Arbitral Tribunal*

1. The Arbitral Tribunal shall decide by order, the award excepted.

2. Orders shall be issued by majority vote. The arbitrators shall not necessarily meet in personal conference.

3. Orders shall be in writing and may be signed only by the President of the Arbitral Tribunal.

4. The orders of the Arbitral Tribunal may be revoked.

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*Article 27 — Hearings*

1. The date of the hearings shall be determined by the Arbitral Tribunal together with the Secretariat and communicated to the parties with adequate notice.

2. The parties may appear at the hearing either in person or through duly empowered representatives and be assisted by counsel with power of attorney.

3. If a party does not appear at the hearing without justified reason, the Arbitral Tribunal shall ascertain whether the party was duly summoned and may then proceed with the hearing. If it ascertains that the party was not duly summoned, the Arbitral Tribunal shall summon the party again.

4. Minutes shall be taken of the hearings of the Arbitral Tribunal. The Arbitral Tribunal may decide that the minutes be replaced, in whole or in part, by a recording.

*Article 28 — Evidence taking*

1. The Arbitral Tribunal may hear the parties and gather all the evidence that is not excluded by mandatory provisions applicable to the proceedings or to the merits of the dispute, both on its own initiative and at the request of a party.

2. The Arbitral Tribunal shall freely evaluate all evidence, with the exception of legal evidence under mandatory provisions applicable to the proceedings or to the merits of the dispute.

3. The Arbitral Tribunal may delegate the evidence taking to one of its members.

*Article 29 — Expert witnesses*

1. The Arbitral Tribunal may appoint one or more expert witnesses to the arbitral body or delegate their appointment to the Chamber of Arbitration.

2. Expert witnesses shall be bound by the same duties as arbitrators under these Rules; the challenge provisions for arbitrators shall apply.

3. Expert witnesses shall allow the parties to be present, either directly or through their counsel, when they perform their task.

4. Where expert witnesses to the arbitral body are appointed, the parties may appoint their own expert witnesses. The expert witnesses' activities at which the party-appointed expert witnesses were present shall be deemed to have been performed in the presence of the parties.

*Article 30 — New claims*

1. The Arbitral Tribunal shall decide on the merits of new claims filed by the parties in the course of the proceedings where one of the following conditions is met:

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- a. the party against which the claim is filed declares that it accepts adversarial proceedings on that claim or does not object thereto before raising any defence on the merits;
- b. the new claim is objectively connected with one of the claims in the proceedings.

2. The Arbitral Tribunal shall always allow for a written reply to new claims.

*Article 31 — Conclusions*

1. When it deems that the case is ripe for issuing a final award, the Arbitral Tribunal shall close the evidence-taking phase and ask all parties to file their conclusions.

2. The Arbitral Tribunal shall set a time limit for filing final statements, if it deems that such statements are necessary or if a party so requests. The Arbitral Tribunal may set further time limits for statements in reply and schedule a final hearing.

3. When asked by the Arbitral Tribunal to file their conclusions, the parties may not file new claims, plead new facts, submit new documents or request new evidence taking.

4. The above paragraphs shall also apply where the Arbitral Tribunal deems it appropriate to issue a partial award, with respect to the dispute that is the subject matter of that award.

*Article 32 — Settlement and withdrawal*

The parties or their counsel shall inform the Secretariat that they withdraw their claims because of a settlement or on other grounds, thereby relieving the Arbitral Tribunal, if already constituted, of the obligation to render an award.

V - THE ARBITRAL AWARD

*Article 33 — Deliberation of the award*

The award shall be deliberated by the Arbitral Tribunal by majority vote. The arbitrators shall deliberate in personal conference only if the rules applicable to the proceedings so require.

*Article 34 — Form and contents of the award*

1. The award shall be in writing and shall indicate:

- a. the parties and their counsel;
- b. the arbitration agreement;
- c. the "rituale" or "irrituale" nature of the award, where Italian law applies to the proceedings;
- d. the seat of the arbitration;
- e. the claims filed by the parties;
- f. the reasons for the decision;
- g. the dispositive part (dictum);
- h. the decision on the costs of the proceedings, referring to the assessment thereof by the Arbitral Council, and on the legal costs of the parties; i. the date, place and manner of the deliberation.

2. The award shall be signed by all the members of the Arbitral Tribunal or by a majority of them. In this latter case, the award shall state that the arbitrators who did not sign could not or did not wish to do so.

3. Each signature shall indicate its place and date. The arbitrators may sign at different places and times.

4. The Secretariat shall indicate any non-compliance with the formal requirements under this Article to the Arbitral Tribunal where the Tribunal submits a draft award for examination before signing it.

*Article 35 — Filing and notification of the award*

1. The Arbitral Tribunal shall file the award with the Secretariat in as many originals as there are parties plus one.

2. The Secretariat shall forward the original award to each party within ten days of the filing.

*Article 36 — Time limit for filing the final award*

1. The Arbitral Tribunal shall file the final award with the Secretariat within six months of its being constituted, thereby closing the proceedings.

2. The Arbitral Council or, when the parties so agree, the Secretariat may extend the time limit in paragraph 1.

3. The time limit in paragraph 1 shall be suspended by the Secretariat in the cases expressly provided for in these Rules and for any other justified reason.

*Article 37 — Partial award and interim award*

1. The Arbitral Tribunal may render a partial award when it settles only one or some of the issues of the dispute.

2. The Arbitral Tribunal may render an interim award to settle one or more preliminary, procedural or substantive issues or in any other case allowed by the rules applicable to the proceedings.

3. In cases under paragraphs 1 and 2 the Arbitral Tribunal shall order the continuation of the proceedings.

4. A partial and interim award shall not affect the time limit for filing the final award, requests for extension to the Chamber of Arbitration excepted.

5. The provisions on the award in these Rules shall apply to partial and interim awards. An interim award shall not contain a decision on the costs of the proceedings and the legal costs.

*Article 38 — Correction of the award*

1. The award may be corrected in the cases and within the time limits provided for in the rules applicable to the proceedings.

2. A request for correction shall be filed with the Secretariat, which shall forward it to the Arbitral Tribunal. The Arbitral Tribunal shall decide by order after hearing the parties within a month of receiving the request for correction.

VI - COSTS OF THE PROCEEDINGS

*Article 39 — Value of dispute*

1. For determining the costs of the proceedings, the value of the dispute shall be the sum of the claims filed by all parties.

2. The Secretariat shall determine the value of the dispute on the basis of the request for arbitration and statement of defence and all further indications of the parties and the Arbitral Tribunal. The criteria for determining the value of the dispute are indicated in Annexe A to these Rules.

3. In any stage of the proceedings the Secretariat may divide the value of the dispute in relation to the claims of each party and request to each party the payments relating to these claims.

*Article 40 — Costs of the proceedings*

1. The Arbitral Council shall make a final determination of the costs of the proceedings before the award is filed.

2. The Arbitral Tribunal shall be informed of the determination of the costs by the Arbitral Council and shall refer thereto in the decision on the costs in the award. The determination by the Arbitral Council shall not affect the decision of the Arbitral Tribunal as to the apportionment of the costs among the parties.

3. Where the proceedings end before the Arbitral Tribunal is constituted, the Secretariat shall finally determine the costs of the proceedings.

4. The costs of the proceedings shall include:

- a. fees of the Chamber of Arbitration;
- b. fees of the Arbitral Tribunal;
- c. fees of the expert witnesses to the arbitral body;
- d. reimbursement of expenses of the arbitrators;
- e. reimbursement of expenses of the expert witnesses to the arbitral body.

5. The fees of the Chamber of Arbitration for administering the proceedings shall be determined on the basis of the value of the dispute in accordance with the Schedule of Fees annexed to these Rules. Where the proceedings end before the award is rendered, lower fees may be determined. The activities included and excluded, respectively, in the fees of the Chamber of Arbitration are indicated in Annexe B to these Rules.

6. The fees of the Arbitral Tribunal shall be determined on the basis of the value of the dispute in accordance with the Schedule of Fees annexed to these Rules. When determining the fees of the Arbitral Tribunal, the Arbitral Council shall take into account the work done, the complexity of the dispute, the rapidity of the proceedings and any other circumstance. Different fees may be established for each member of the Arbitral Tribunal. Lower fees than the minimum fees provided for in the Schedule may be determined where the proceedings end before the award is rendered; fees in excess of the Schedule may be determined in exceptional cases.

7. The fees of the expert witnesses to the arbitral body shall be determined in equity, taking into account the schedule of fees of their profession, the court schedule of fees and any other circumstance.

8. The reimbursement of the expenses of arbitrators and expert witnesses to the arbitral body shall be against documents proving such expenses. If such documents are lacking, the expenses shall be deemed to be included in the fees.

*Article 41 — Advance and final payments*

1. When the request for arbitration and the statement of defence are filed, the Secretariat shall request the parties to make an advance payment and set a time limit for this payment.

2. The Secretariat may request further advance payments to the parties in relation to work done or changes in the value of the dispute, and set a time limit for these payments.

3. The Secretariat shall request payment of the balance of the costs following the final determination by the Arbitral Council before the award is filed, and shall set a time limit for these payments.

4. The payments in paragraphs 1, 2 and 3 shall be requested of all parties in equal parts where the Secretariat estimates one value of the dispute on the basis of all the claims filed by the parties, or shall be requested of the parties in different proportions on the basis of the value of their respective claims.

5. For requesting payments, the Secretariat may consider several parties as one, taking into account the manner in which the Arbitral Tribunal is constituted or the community of interests of the parties.

*Article 42 — Failure to pay*

1. Where a party does not make a requested payment, the Secretariat may request the other party to make a substitute payment and set a time limit therefor, or may divide the value of the dispute, if it has not yet been estimated, request each party to make a payment based on the value of its claim and set a time limit therefor.

2. If any of the requested payments is not made within the time limit given therefor, the Secretariat may suspend the entire proceedings or only the proceedings on the request to which the payment refers. The Secretariat shall lift the suspension order when the payment is made.

3. Where the parties do not make the payment within two months of the notice of the order of suspension under paragraph 2, the Secretariat may declare the entire proceedings, or the proceedings on the request to which the payment refers, concluded.

VII - PROVISIONAL PROVISIONS

*Article 43 — Entry into force*

1. These Rules shall be effective as of 1 January 2004.

2. The Arbitral Council may add to, amend and replace these Rules and establish the date on which the new provisions shall enter into force by a decision to be approved by the Board of the Chamber of Arbitration.

3. Unless otherwise provided, the new provisions introduced pursuant to paragraph 2 shall apply to proceedings commenced after the date on which the provisions have entered into force.

ANNEXE "A"

*Criteria for determining the value of the dispute*

1. The value of the dispute shall be the sum of all the claims filed by the parties that aim at obtaining a declarative order, an order to pay or perform or an order that establishes a new juridical situation.

2. Where a party files primary and subsidiary claims, only the primary claims shall be taken into account for determining the value of the dispute.

3. Where it is necessary to make a preliminary estimate of several alternative claims, rather than subordinate claims, filed by the parties in order to determine the subject matter of a claim or claim for set-off, the value of the dispute shall be determined on the basis of the sum of these claims.

4. Where a party seeks ascertainment of a debt while only seeking a declarative order, an order to pay or perform or an order that modifies the existing juridical situation with respect to a part thereof, the value of the claim shall be the total amount of the debt to be ascertained.

5. The value of a debt claimed as set-off shall not be calculated if it is lower than or equal to the debt claimed by the other party. If it is higher, only the value in excess shall be calculated.

6. Where a party modifies the value of its claims when filing its conclusions, the value of the claims shall be calculated with respect to the claims that the Arbitral Tribunal has examined.

7. Where the value of the dispute is undetermined and undeterminable, the Chamber of Arbitration shall determine it in equity.

8. The Chamber of Arbitration may determine the value of the dispute according to criteria other than those provided for in the above paragraphs, where the application of the criteria in the above paragraphs is manifestly unjust.

## ANNEXE "B"

*Fees of the Chamber of Arbitration: included and excluded activities*

1. The following activities shall be included in the fees of the Chamber of Arbitration indicated in the Schedule of Fees:

- a. Managing and administering proceedings as defined in the Preamble to these Rules with respect to each body of the Chamber of Arbitration;
- b. Receiving and forwarding acts;
- c. Controlling the formal validity of acts,
- d. Convening and hosting hearings on its premises;
- e. Supplying its staff at hearings and taking minutes of hearings.

2. The following activities and services are excluded from the fees of the Chamber of Arbitration and shall be paid for separately, if requested:

- a. Photocopying acts and documents filed by the parties where the number of copies is insufficient;
- b. Adding revenue stamp taxes to acts where needed;
- c. Recording of hearings and transcription of tapes;
- d. Interpretation services;
- e. Videoconference.

## CODE OF ETHICS OF ARBITRATORS

*Article 1 — Acceptance of the Code of Ethics*

1. An arbitrator accepting a mandate in an arbitration administered by the Chamber of Arbitration of Milan shall act in accordance with the Rules of the Chamber of Arbitration and this Code of Ethics, independent of the party that appointed him.

2. This Code of Ethics shall apply by analogy to expert witnesses to the arbitral body appointed in the arbitral proceedings administered by the Chamber of Arbitration.

*Article 2 — Party-appointed arbitrator*

A party-appointed arbitrator shall be bound by all the duties under this Code of Ethics throughout the entire course of the proceedings; he may contact the party or its counsel regarding the appointment of the President of the Arbitral Tribunal if asked to appoint him. The indications given by the party shall not be binding on the arbitrator.

*Article 3 — Competence*

When accepting his mandate, the arbitrator shall, to the best of his knowledge, be able to perform his task with the necessary competence with respect to his adjudicating function and the subject matter of the dispute.

*Article 4 — Availability*

When accepting his mandate, the arbitrator shall, to the best of his knowledge, be able to devote the necessary time and attention to the arbitration to perform and complete his task as expeditiously as possible.

*Article 5 — Impartiality*

When accepting his mandate, the arbitrator shall, to the best of his knowledge, be able to perform his task with the necessary impartiality characterizing the adjudicating function he undertakes in the interest of all parties.

*Article 6 — Independence*

When accepting his mandate, the arbitrator shall, to the best of his knowledge, be objectively independent. He shall remain independent during the entire arbitral proceedings as well as after the award is filed, during the period in which annulment of the award can be sought.

*Article 7 — Statement of impartiality and independence*

1. In order to guarantee his impartiality and independence, the arbitrator shall supply the written statement provided for by the Rules of the Chamber of Arbitration when accepting his mandate

2. All doubts as to the opportunity to disclose a fact, circumstance or relationship shall be resolved in favour of disclosure.

3. Where facts, circumstances and relationships that should have been disclosed are subsequently discovered, the Chamber of Arbitration may deem that this fact is a ground for replacing the arbitrator during the proceedings or not confirming him in other arbitral proceedings.

*Article 8 — Development of the proceedings*

The arbitrator shall promote a thorough and expeditious development of the proceedings. In particular, he shall decide on the date and manner of the hearings in such a way as to allow for the equal treatment of all parties and the full compliance with the due process of law.

*Article 9 — Unilateral contacts*

In the entire course of the proceedings, the arbitrator shall refrain from all unilateral contact with the parties or their counsel. Where there is such a unilateral contact, the arbitrator shall immediately notify the Chamber of Arbitration so that the Chamber can inform the other parties and arbitrators.

*Article 10 — Settlement*

The arbitrator may at all stages suggest the possibility of a settlement or conciliation of the dispute to the parties but may not influence their decision by indicating that he has already reached a decision on the outcome of the proceedings.

*Article 11 — Deliberation of the award*

The arbitrator shall refrain from any obstructive or non-cooperative behaviour and promptly participate in the deliberation. He shall remain free to refuse to sign the award where the decision is taken by majority vote by the Arbitral Tribunal.

*Article 12 — Costs*

1. The arbitrator shall not accept any direct or indirect arrangement on fees and expenses with any of the parties or their counsel.

2. The arbitrator shall be entitled to a fee and reimbursement of expenses as solely determined by the Chamber of Arbitration in accordance with its Schedule of Fees, which is deemed to be approved by the arbitrator when accepting his mandate.

3. The arbitrator shall avoid superfluous expenses that can increase the costs of the proceedings in an unjustified manner.

*Article 13 — Violation of the Code of Ethics*

The arbitrator who does not comply with this Code of Ethics shall be replaced by the Chamber of Arbitration, which may also refuse to confirm him in subsequent proceedings because of this violation.

## SCHEDULE OF FEES in Euros

VALUE OF DISPUTE	FEES CHAMBER OF ARBITRATION	FEES SOLE ARBITRATOR		FEES ARBITRAL PANEL	
		Min	Max	Min	Max
1. Up to 25,000	400	600	- 1,500	1,600	- 3,800
2. 25,001 - 50,000	800	1,500	- 2,500	3,800	- 6,000
3. 50,001 - 100,000	1,500	2,500	- 4,500	6,000	- 12,000
4. 100,001 - 250,000	3,000	4,500	- 10,000	12,000	- 25,000
5. 250,001 - 500,000	5,000	10,000	- 20,000	25,000	- 50,000
6. 500,001 - 1,000,000	8,000	20,000	- 30,000	50,000	- 75,000
7. 1,000,001 - 2,500,000	12,000	30,000	- 50,000	75,000	- 120,000
8. 2,500,001 - 5,000,000	18,000	50,000	- 80,000	120,000	- 180,000
9. 5,000,001 - 10,000,000	25,000	80,000	- 100,000	180,000	- 250,000
10. 10,000,001 - 25,000,000	35,000	100,000	- 130,000	250,000	- 320,000
11. 25,000,001 - 50,000,000	48,000	130,000	- 180,000	320,000	- 420,000
12. 50,000,001 - 100,000,000	70,000	180,000	- 230,000	420,000	- 550,000
13. Above 100,000,000 of the amount exceeding 100,000,000 amount 120,000	70,000 +0.1% Maximum	230,000 +0.5% of the amount exceeding 100,000,000		550,000 +0.12% of the amount exceeding 10,000,000	

This Schedule of Fees shall be effective as of 1 January 2004; it does not include VAT and any other legal and fiscal duties mandated by law.

The total amount of fees is indicated, to be apportioned among the parties.

Payments shall be made either by cheque made out to the Chamber of National and International Arbitration of Milan (*Camera Arbitrate Nozionale e Internazionale di Milano*) or by bank transfer to account no. 000000385928, Banca Intesa BCI, Milan headquarters (*sc. Je centrale di Milano*), AB1 03069 - CAB 9400 - CIN H.