

The New Arbitration Rules of CEPANI

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The new arbitration rules of CEPANI (The Belgian Center for Arbitration and Mediation) came into force on 1 January 2013 and change the 2005 rules considerably. They will soon be studied and applied around the globe as they will be the applicable rules for the 21st Willem C. Vis International Commercial Arbitration Moot (2014).

The new rules get CEPANI up to speed with the 2012 ICC-Rules and coincide with the brand new Belgian Arbitration Law - based on the UNCITRAL Model Law - which will come into force as of 1 September 2013. Interesting to know is that the working group who drafted the new CEPANI arbitration rules is for the greater part identical to the working group who drafted the new Belgian Arbitration Law.

The new rules contain a whole new chapter on multiple parties and multiple contracts in order to better facilitate the administration thereof and to give the parties involved in multi-party and/or multi contract disputes the opportunity to settle their disputes in a single arbitration proceeding. In addition, the articles regarding the intervention of a third party and the consolidation of different arbitration proceedings were adapted.

Another brand new chapter is devoted to interim and conservatory measures. In accordance with the 2012 ICC rules and many other national rules (NAI, DIS, ASA, etc), the CEPANI rules now provide for the possibility to request interim and conservatory measures before the tribunal is constituted. The so-called emergency arbitrator will be appointed by the CEPANI within forty-eight hours after the request (and the payment of the provisional advance of 15K) and an award is to be rendered by the arbitrator within a mere fifteen (working) days. The rules add that the emergency arbitrator cannot be appointed as arbitrator in the proceedings on the merits and that the tribunal (on the merits) is evidently not bound by the decision on the interim and conservatory measures.

Regarding the liability of arbitrators and taking into account that arbitrators provide a paid service, the new rules provide in a limitation (not an exclusion) of the liability of the arbitrator acting under the CEPANI rules. Most important is that the distinction is made between the decision-making power of the arbitrator for which liability is excluded (with the exception of fraud) and any other act or omission by the arbitrator (or the CEPANI) for which liability can incur in case of gross negligence (and in case of fraud).

Other changes regard: the role of the arbitrator; the confidentiality of the proceedings (including the existence thereof); the notification of the arbitral award (by registered mail and e-mail); the nature of the administrative decisions made by CEPANI (unchallengeable); the statement of availability, acceptance and independence of the to-be-appointed-arbitrator; the timely manner in which proceedings should be conducted (the award is to be rendered within six months after the signing of

the Terms of Reference); the sanctions towards the dilator tactics of a party; the costs of the parties; etc.

The new CEPANI arbitration rules will apply to all requests for arbitration submitted as of 1 January 2013. Pending arbitrations remain subject to the 2005 rules, unless agreed otherwise.

For those of you who want to read more and master the Dutch language, a book came out on the new CEPANI arbitration rules by Dirk De Meulemeester and Herman Verbist: *Arbitrage in de Praktijk* [Brussels, Bruylant, 2013, 514 pages].