

# GENERAL RULES OF THE CARACAS CHAMBER OF COMMERCE ARBITRATION CENTER

## EXPLANATION AS TO THE PURPOSE OF THE GENERAL RULES OF THE CARACAS CHAMBER OF COMMERCE ARBITRATION CENTER

On August 12, 1998, the Active Chamber issued General Rules of the Caracas Chamber of Commerce Arbitration Center, because the Commercial Arbitration Law of April 7, 1998 permits Arbitration Centers created prior to its commencement date to continue operating, subject to amending their Rules to meet the requirements of the new Law.

The General Rules of the Caracas Chamber of Commerce Arbitration Center (CACCC) authorize the Executive Committee of the Arbitration Center to submit to the Active Chamber any amendments to the General Rules considered necessary.

Since the said Rules have been applied in the various arbitration proceedings conducted by the Center, and due to the necessity to clarify and correct certain aspects in order to improve the conduct of arbitration proceedings, the following amendments and clarifications have been made:

### A. In Arbitration Matters:

1. *The computation of time limits is amended.* Under the 1998 Rules, time limits were calculated by reference to consecutive days. Time limits will now be calculated by reference to business days, defined as any days other than Saturdays or Sundays, any national holidays established by Law, or those declared non-working days by other legally binding measure. Non-working days are those designated as such by the Executive Committee.

2. Any parties involved in arbitration proceedings already underway at the commencement date of the new Rules will be allowed to adopt the procedural rules of the new Rules.

3. *Priority of Applicable Legal Provisions.* The priority of the legal provisions applicable to arbitration proceedings is clearly established. Ranking first is the independent determination of the parties as set out in an arbitration agreement or clause. Thereafter, the General Rules of the CACCC shall apply and, if silent, the Commercial Arbitration Law shall apply. Once an Arbitration Tribunal is constituted for a specific case, it will have the authority to establish procedural rules in the absence of an agreement or the silence of the parties.
4. *Award Issue Date.* Since an award may be signed and dated outside the facilities of the Arbitration Center and filed at the Center at a later date, the Award Issue Date will be the date when the Executive Director notifies the parties of its existence by notice.  
  
The date of notice of the award is of utmost importance, because it is from such date that the time set out in Article 43 of the Commercial Arbitration Law starts to run, namely the time within which to file a nullity appeal against the award. The Appeal Issue Date and the appeal notice date shall be the same.
5. *Arbitration Request Amount.* A new concept is introduced for the calculation of the administrative charges and arbitrator fees. Both administrative charges and arbitrator fees will now be calculated on the basis of the "Arbitration Request Amount". Furthermore, the "Arbitration Request Amount" is to be determined by adding to the principal amount any interest, damages, expenses, costs, and any other amount that is requested to be added.
6. *Composition of Executive Committee and Appointment of Members.* Under the 1998 Rules, the Committee consisted of six members: three principal members and three alternates. The principal members were the President, the Second Vice President and the Treasurer of the Caracas Chamber of Commerce, and the alternates were the First Vice President and two members of the Active Chamber of the Caracas Chamber of Commerce. The Committee was presided over by the President of the Caracas Chamber of Commerce and, in his absence, by the First Vice President. The composition is now changed. Under the new Rules the Executive Committee of the CACCC shall consist of six (6) members, to be appointed by the Active Chamber. These will be: a President, a Vice President, a Treasurer and three (3) Voting Members, all of whom must all be members of the Active Chamber or have been members of the Executive Committee of the Caracas Chamber of Caracas. Meetings will be presided over by the President of the Executive Committee and, in his absence, by the Vice President. The Executive Committee shall be appointed at the first meeting of the Active Chamber following the Chamber's Annual Meeting.
7. *Increase in Fees.* Both the administrative charges and the percentages for calculating the arbitrator fees are increased. A progressive, cumulative scale is adopted to calculate arbitrator fees, returning to the system established under the 1991 Rules.
8. *Payment in of Administrative Charges and Arbitrator Fees.* The point at which administrative charges and arbitrator fees become payable is clarified. The Claimant must now make payment when requested so to do by the Executive Director, who will set a time limit for doing so once the Executive Committee has determined the percentage to be applied in calculating the arbitrator fees. The Respondent must pay-in such amounts upon answering the claim.
9. *Additional expenses and costs.* The new Rules provide that any additional expenses and costs arising during the arbitration proceedings shall be the responsibility of the party bringing or promoting the action. When the Arbitration Tribunal initiates an action, the responsibility for the expenses will be shared between both parties, without prejudice to the possibility of their repayment when costs are assessed in the final Award. This was not the case under the 1998 Rules.
10. *Administrative Charges and Arbitrator Fees on Counterclaims.* Counterclaims will be considered as separate claims for the purpose of calculating administrative charges and arbitrator fees. In other words, in the event of a counterclaim, administrative charges and arbitrator fees will be calculated separately from the original claim or request. The counterclaimant shall pay-in fifty percent (50%) of the original request (claim) and fifty percent (50%) of the counterclaim, and the defendant to the counterclaim (the original claimant) shall pay in its respective fifty percent (50%) of the amount of the claim and the counterclaim. Should the defendant to the counterclaim fail to pay in the corresponding amount, the counterclaimant shall be allowed a time period to do so. Otherwise, the Executive Director will be empowered to order the dismissal of the counterclaim without it being considered by the Arbitration Tribunal when making a final decision on the matter.

11. *Closing of file.* Under the 1998 CACCC General Rules, the Executive Director could set a time period for payment in by the claimant, if not already paid, of fifty percent (50%) of the estimated administrative and arbitrator fees. Article 31 of the 1998 CACCC General Rules established that if the claimant failed to comply with these requisites within such period, "the file shall be closed, without prejudice to the Claimant's right to file the same claims at a later date, in a new Request".

We believe that since the procedural rules of the General Rules of the CACCC are extremely flexible, the expression "shall be closed" must be construed as authority for the Executive Director of the Center to decide whether the issue warrants final closing of the file. This is clearly established in the new Rules by indicating that the Executive Director may (optionally) close the file.

12. Number of Arbitrators. The parties choose an odd number of arbitrators to form the Arbitration Tribunal. The model arbitration clause recommended by the CACCC suggests that the parties indicate the number of arbitrators to form the tribunal. Should they choose not to do so at that time, the parties may indicate such number at any time, up to the time for appointing arbitrators. Under the 1998 Rules, if the parties failed to decide the number of arbitrators by mutual agreement, the Executive Committee appointed a sole arbitrator, unless the dispute was deemed to warrant the appointment of three (3) arbitrators. Under the new Rules, this rule is reversed. In other words, should the parties fail to establish the number of arbitrators by mutual agreement before the date set for such appointment, the Executive Director will set a time limit for them to do so. Otherwise, the Arbitration Tribunal shall consist of three (3) arbitrators. If the Executive Committee considers that the dispute does not warrant the appointment of three (3) arbitrators, it may appoint a sole arbitrator. These matters all follow the principles of the Commercial Arbitration Law.

13. *Appointment of third arbitrator.* It is made clear that the third arbitrator shall preside over the Arbitration Tribunal. Such third arbitrator shall be appointed by the two arbitrators previously appointed by each party, within a period of no more than ten (10) business days, running from the date of acceptance of the last of the arbitrators appointed by the parties. Otherwise, the third arbitrator will be appointed by the Executive Committee of the CACCC. This clarification was necessary because, under the 1998 Rules, it appeared that the parties appointed the third arbitrator.

14. *Arbitration Tribunal Formation Hearing Record.* The General Rules of the CACCC of 1998 did not regulate the Arbitration Tribunal Formation Hearing Record. Indeed, there was no express reference to what is in practice called the "Arbitration Tribunal Formation Hearing Record", the content of which is very brief. It merely states the name of the parties, their representatives, the place, date and time of the act. This is different from the "Terms of Reference", which is in fact regulated by the 1998 General Rules of the CACCC. The purpose of the "Arbitration Tribunal Formation Hearing Record" is to attest to the holding of the Arbitration Tribunal Formation Hearing, because in most cases, the "Terms of Reference" is not finished at such time. Signature to the "Arbitration Tribunal Formation Hearing Record" does not imply that the parties agree with the content of the "Terms of Reference". Its sole purpose is to attest to the holding of the Arbitration Tribunal Formation Hearing, which is the first procedural hearing of the arbitration under the 1998 CACCC General Rules arbitration procedure.

15. *Date from which the six (6) month time period of six (6) months runs for issuing an award.* Formerly, the six (6) month time period for the Arbitration Tribunal to issue a final award ran from the date of formation of the Arbitration Tribunal, since the date of holding of the Arbitration Tribunal Formation Hearing and that of preparation of the Terms of Reference coincided. The new General Rules establish that the time limit of six (6) months for issuing the award is to be calculated from the date on which the last of the parties signs the Terms of Reference. This correction is made because it is in the Terms of Reference that the Arbitration Tribunal determines the matter that is to be decided. It would therefore not be logical for the period to run from the date of Formation of the Arbitration Tribunal because at that point the arbitrators do not know the details of the disputed matter.

16. *Motion as to Lack of Jurisdiction.* The 1998 General Rules of the CACCC are silent as to the point at which a motion to challenge jurisdiction may be filed. Accordingly, the provisions of Article 25 of the Commercial Arbitration Law were applied. The amended Rules provide that the parties may file a motion challenging jurisdiction at any time before the holding of the Arbitration Tribunal Formation Hearing. This abides by the principle of severability or autonomy of the arbitration clause or arbitration agreement, and suggests that the Arbitration Tribunal may decide on the motion concerning the existence or validity of the arbitration agreement, as to whether it is considered to be an agreement independent from the

remaining contractual provisions, and the decision by the Arbitration Tribunal that the agreement is null does not entail the nullity of the arbitration clause.

The lack of jurisdiction motion is to be decided by the arbitrators in the final award. Once the Arbitration Tribunal has reviewed the file, it will rule on the matter of jurisdiction. If it considers that it lacks jurisdiction, it will issue its final award in this regard. Should it consider itself competent to hear the case, such ruling will be included in the final award that resolves the basis of the dispute, once the proceedings have been substantiated.

#### **B. Regarding Reconciliation:**

Reconciliation by Mediation. Special attention should be paid to the change from the term reconciliation to mediation.

In Venezuela, various legislative provisions govern reconciliation. These are the Code of Civil Procedure, establishing reconciliation as a procedural stage within ordinary civil proceedings, where the reconciler is a State official, i.e., a judge. Such reconciliation conducted within a judicial process, ends the process and has the same effect as between the parties as a final decision. The Organic Labor Law, governing Conciliation and Arbitration as mechanisms for resolving collective conflicts; the Consumer and User Protection Law (1995) establishes conciliation and arbitration as voluntary mechanisms for the resolution of disputes arising between consumers, users and suppliers of services. In this case, the affected party must choose between these mechanisms. Conciliation and arbitration in consumer protection matters are dealt with under what the law calls the "Conciliation and Arbitration Chamber", consisting of a President and four Directors.

These procedures have been little developed due to the imprecision of the aforementioned laws, which could result in significant legal insecurity and discourage parties interested in using these mechanisms to resolve their disputes.

The Organic Justice of the Peace Law (1994) utilizes conciliation as a means for resolving conflicts and disputes not contrary to public policy. The person deciding the conflict is known as a "Justice of the Peace", and takes decisions in accordance with equity. Of the methods referred to, this has been the most successful.

In Venezuela, the term "mediation" has been seldom used. The Arbitration Center, in developing the provisions of the sole paragraph of Article 258 of the current Constitution, has decided to use the term "mediation" to refer to the alternative dispute resolution mechanism characterized by its being voluntary and fast. Using this mechanism, the parties involved in the conflict themselves seek its resolution, with the help of an impartial third party acting to facilitate and lead communication. Those interested in this mechanism assume the lead in seeking possible solutions and control the process, which is quick and informal. No judge or other State official is involved in the mediation.

In the case of the CACCC, the mediator is an impartial, neutral third party individual specially trained to help in conflict resolution, acting as a catalyst but without making any decisions, because the parties must do this themselves, with the help and participation of the mediator. The mediation does not replace the law or the judicial process. It merely allows an opportunity for common sense, enabling negotiation with another party without compromising the position.

Mediation conducted at the CACCC is characterized by being:

1. A completely voluntary process. The parties choose whether to participate in the mediation process, may end it at any time and are not obliged to reach an agreement.
2. Based on the principle of confidentiality. In other words, the mediator and the parties cannot disclose the matters covered in the sessions, except with the express authorization of those participating in the mediation.
3. Not subject to procedural rules. The process is entirely informal and flexible.
4. The CACCC mediation begins with a Mediation Request, which must be presented in writing, and must identify the parties, the differences that are the subject of the mediation and the Mediation Request Amount.
5. The parties act, negotiate and propose the solutions. The agreement is initiated by the interested parties themselves, thereby protecting the interests of both.
6. The mediator shall be appointed, except as otherwise agreed, by the Ex-

