

# Pre-Arbitral Referee Rules of the European Court of Arbitration

(Corte Arbitrale Europea, Cour Européenne d'Arbitrage,  
Corte Europea de Arbitraje, Europäischer Schiedsgerichtshof).

These Rules shall apply as well as the Internal Rules of the Court as well as the National Delegation having jurisdiction over a national dispute to Pre-Arbitral Referee proceedings organised by the European Court of Arbitration, having its seat in Strasbourg (hereinafter the Court)

The applicable rules shall be those in force at the time the application for the Pre-Arbitral Referee proceedings is made.

A mandatory provision or public policy rule applicable at the place of the proceedings shall take precedence over and replace any provisions of these Rules where any conflict exists between a provision of the Rules and said mandatory provisions or public policy rule.

## Article 1 - *NATURE OF THE PROCEEDINGS*

These proceedings consist in appointing a person (the Pre-Arbitral Referee) entrusted and empowered with the authority to apply on behalf of the parties a solution of urgent matters or preliminary conservatory or interlocutory measures (any of them referred to thereafter as the "solution"). The intervention of the Pre-Arbitral Referee may be requested only before an arbitral tribunal is appointed or, in the absence of an arbitration agreement, before a state court is seized with the matter.

## Article 2 - *RECOURSE TO A REFEREE SITTING AS A PRE-ARBITRAL REFEREE*

Any agreement made by the parties to have or allow recourse to a Pre Arbitral Referee on urgent matters which may arise before the appointment of the Arbitral Tribunal or before a state court is seized must be made in writing.

## Article 3 - *APPLICATION FOR APPOINTMENT OF A PRE-ARBITRAL REFEREE*

A party wishing to submit an urgent matter to a Pre-Arbitral Referee under these Rules, must send to the Secretariat of the European Court of Arbitration or to the Secretariat of the National Delegation having jurisdiction, where the dispute is domestic, within the meaning of this term set out by art. 2, Internal Rules of this Court (hereafter the Secretariat) an Application with two copies for the Court together with sufficient copies for all parties to the agreement enabling and empowering a pre-arbitral referee procedure.

A copy of all documents in support of the Application must be attached to each copy of the Application.

The submission by way of application must contain:

- the name or corporate name and the address or registered offices of each party;
- a certificate from the relevant Companies Registry or from the relevant Chamber of Commerce or equivalent body for an applicant which is a corporate legal entity,
- a statement of the facts upon which the Application is based,
- the identification of the matter upon which the disagreement between the parties has arisen,
- the solution conservatory measures or interlocutory injunctions sought and the detailed grounds supporting the Application,
- the agreement providing for the pre-arbitral referee procedure or the contract containing such an agreement, bearing the signature of the parties,
- the name of the attorney at law who will represent the applicant,
- the name of the possible expert who will assist the parts,
- the names of the persons whom the Pre-Arbitral Referee is requested to hear as witnesses,
- the amount in dispute inasmuch as it can be established.

The Application must be in the language agreed upon by the parties, or in the absence of such an agreement, in the language of the Pre-Arbitral Referee agreement or, if none of these two criteria can help, in the usual language utilized in the contractual relations between the parties.

#### Article 4 - *PROVISION FOR COSTS*

The applicant shall pay to the Court of Arbitration an amount being 50% of the total sum due for the proceedings as established by the schedule for the Referee's fees and the administrative dues of the Court attached to and forming part of the Pre-Arbitral Referee rules in force at the time the Application is made. The other party/ies shall pay the balance of 50% of the Referee's fees and of the administrative dues of the Court.

By agreeing to this procedure, the parties undertake to pay all the costs and fees of the Referee, the administrative dues of the Court (and the costs and fees of a possible expert appointed), in accordance with the schedule established by the Court in the above mentioned Appendix.

Payment in full is to be made before the Referee delivers his solution.

#### Article 5 - *ANSWER*

Each other party to the Pre-Arbitral Referee agreement shall send to the Secretariat its Answer in response with supporting documents by fax or by courier, within ten days of receipt of the Application. Each party will also send a copy to the applicant.

The requirements for documents and payments as set forth in respect of the Application shall also apply to the Answer in response.

#### Article 6 - *TASK OF THE SECRETARIAT*

The Secretariat shall:

- check that the Application and the Answer comply with the current rules,
- record the Application or, if it is a domestic dispute, transmit it to the relevant National Delegation of the country concerned, if there is such a National Delegation,
- ensure that the payment of the advances on fees and costs is made,
- request an additional payment of fees and costs where necessary including to allow the enforcement of any conservatory or interlocutory injunctions ordered,
- verify that the Application and Answer have been received by the other party,
- where there is no agreement for a Pre-Arbitral Referee, request the other party if it accepts these proceedings and the Pre-Arbitral Referee Rules of the Court, requiring confirmation of acceptance in writing,
- inform the Executive Committee of the Court or of the National Delegation monthly on the state of the proceedings,
- deliver to the person who is delegated for this purpose by the Executive Committee copies of the Application, of the Answer and of the documents and annexes.

#### Article 7 - *APPOINTMENT OF THE PRE-ARBITRAL REFEREE*

The parties may jointly nominate the Pre-Arbitral Referee.

If this is done, the Executive Committee or its duly appointed representative, following establishing the prima facie existence of the agreement for a Pre-Arbitral Referee and verifying that the appointed Pre-Arbitral Referee satisfies the requirements stated herein, will appoint the Pre-Arbitral Referee and notify such appointment to the parties, with a copy to the Secretariat. Failing nomination by the parties, the Executive Committee of the Court, or as applicable of the relevant National Delegation, will appoint the Referee after having verified his independence and impartiality and after having taken into account any criteria proposed by the parties as a requirement for appointment, his possession of the experience required to deal with this matter, the possible proposals made by the parties and his time availability.

The Secretariat will immediately notify the parties in writing of the appointment of the Referee and will attach to the notice the Order of Appointment made by the Court and the curriculum vitae of that Referee.

The Referee shall accept appointment in writing, within 4 working days of his receipt of the notice issued by the Secretariat.

The Referee shall send to the Secretariat acceptance by fax or by courier, and shall include the declaration of independence and impartiality as well as an undertaking to comply with these Rules. Failure by the Referee to accept within the time limit shall be taken as a refusal to accept the appointment.

#### Article 8 - *CHALLENGE AND REPLACEMENT OF THE REFEREE*

Each party may challenge the Referee on the basis of a lack of impartiality, independence, competence or time availability. A challenge to the Referee must be received by the Secretariat within 7 days of receipt by that party of notice of appointment of the Referee.

The Secretariat shall then invite the other party to comment on the challenge within 5 working days of his receipt of the challenge.

The Executive Committee having jurisdiction or its appointed representative will determine the challenge within 7 working days running from the expiry of the period allowed for party comment on the challenge if no comment is made or from receipt of comments if lodged earlier.

The Executive Committee or its appointed representative may make the determination without giving reasons.

Any determination made is final and may not be appealed.

The determination will be communicated concurrently to the parties with the appointment of the possible new Referee.

A new Referee will also be appointed if the initially appointed Referee does not proceed with diligence or is unable to duly carry out the tasks of Referee for any other reason.

#### Article 9 - *THE PROCEEDINGS*

9.1. The Referee is responsible for adopting on behalf of the parties a solution for which he has authority to act

9.2. The Referee shall conduct the proceedings in the manner which he deems appropriate, provided that the parties are given an equal opportunity to express their opinions, to produce documents and to comment on the position taken by the other party.

9.3. The Referee may visit any place, hear the parties or any other person, request any documents and ask the advice of an expert

9.4. Any attempts by a party to delay the proceedings will be rejected by the Referee where such delay is inconsistent with the speed of this Pre-Arbitral Referee process.

The parties shall be requested to attend any Pre-Arbitral Referee hearing. However their unavailability to attend or failure to make comments shall not oblige the Referee to delay.

#### Article 10 - *LANGUAGE USED IN THE PROCEEDINGS*

The proceedings shall be conducted in the language as determined in accordance with the provisions of Article 3 above.

#### Article 11 - *SEAT OF THE PROCEEDINGS*

The Referee will sit in the place indicated by the competent Executive Committee when the appointment as Referee is made. The Referee may carry out investigations and hold meetings in places other than that decided as the seat of the reference. However his decision shall always be rendered at the seat of the proceedings.

#### Article 12 - *EFFECT OF THE APPOINTMENT OF AN ARBITRATOR*

If an Arbitral Tribunal is appointed after an application for a Pre-Arbitral Referee has been made, the parties agree that the Referee will continue the Pre-Arbitral Reference proceedings and adopt his solution on behalf of the parties. Such Pre-Arbitral Referee solution shall

be submitted to the Arbitral Tribunal for its review.

If an Arbitral Tribunal has already been validly seized of the dispute before the request for Pre-Arbitral Referee procedure is filed the Request for the Arbitral Referee procedure shall be of no effect.

If the dispute is brought before a state court after the request for a Pre-Arbitral Referee has been made, the Pre-Arbitral Referee may continue with the proceedings unless prevented from doing so by the *lex fori*.

#### Article 13 - *DEADLINE FOR THE REFEREE'S SOLUTION*

The Referee shall adopt his solution within 40 working days commencing from the day of his receipt of the file.

The Executive Committee having jurisdiction may give the Referee only one extension of a maximum of 15 working days and only if absolutely necessary.

#### Article 14 - *THE REFEREE'S SOLUTION*

The Referee may put to the charge:

- of one party to the Pre-Arbitral Referee agreement to make a payment to another party to the said agreement,
- of one party to carry out an act, transaction or specific operation or that it abstains from doing so; or apply,
- conservatory measures or interlocutory injunctions necessary to prevent a damage or to ensure that the performance of a contract is not unduly delayed or interrupted, or to ensure that the behaviour of one of the parties is not in flagrant conflict with its contractual undertakings, or to protect the rights and property of a party, or adopt any other solution to an urgent problem,
- any other urgent measure, especially in anticipation of the enforcement of an award or judgment on the merits or likely to be rendered in the future,
- all measures necessary to obtain urgently needed evidence.

The Referee may not order any measures other than those requested by the parties, unless the application to appoint him expressly allows him to adopt such measures as are most appropriate to the requirements of the dispute.

The Referee will give only very concise reasons for his solution.

#### Article 15 - *CONDITIONAL SOLUTIONS*

The Referee may make his solution conditional upon the production of a guarantee or upon any other act, behaviour or measure that he may consider appropriate.

#### Article 16 - *PROVISIONAL NATURE OF THE REFEREE'S SOLUTION*

The Referee's solution is provisional.

Therefore the solution of the Referee shall not prevent the parties, having complied with it,

from submitting the same matter to the finally competent jurisdictional body. However, any solution of the Referee will remain effective until it has been reviewed by the said competent jurisdictional body.

#### Article 17 - *CONFIDENTIALITY*

The parties and the Referee shall not reveal to any third party the existence of the proceedings or of any document referring to it, unless it is necessary in order to continue the proceedings.

The documents concerning the proceedings may be produced before a body of competent jurisdiction which may be later seized with the matter.

#### Article 18 - *COSTS*

The Executive Committee having jurisdiction shall set the costs and fees of the Referee and the administrative dues of the Court

#### Article 19 - *PROHIBITION OF THE PRE ARBITRAL REFEREE ACTING AS ARBITRATOR*

The Referee may not act as an arbitrator in the same matter.

Any future arbitrator may request the Referee in writing to give details of his involvement in the matter, giving notice of this to the parties.

#### Article 20 - *RECEIPT OF THE SOLUTION AND COMMUNICATIONS TO THE PARTIES*

The Referee will file his decision with the Executive Committee having jurisdiction.

The Secretariat shall confirm that the fees of the Referee and the administrative dues of the Court have been fully paid.

If the fees of the Referee and the administrative dues have not been paid the parties agree that the solution of the Referee will not be issued to them until the Court has received full payment from the parties or from one of them.

#### Article 21 - *COMMITMENT BY THE PARTIES TO ENFORCE THE REFEREE'S SOLUTION*

By submitting to these Rules each party undertakes to perform without delay the solution established by the Referee, without prejudice to its right to later submit the dispute to the competent jurisdictional body. The solution of the Pre-Arbitral Referee may be enforced including by application to the state court having competent jurisdiction at the place of enforcement. Enforcement proceedings may also provide for penalties for non-performance.

## SCALE OF FEES AND ADMINISTRATIVE DUES OF THE COURT PRE-ARBITRAL REFEREE PROCEEDINGS

Value in dispute	Fees of the Pre-Arbitral Referee (to be divided among the parties) Euro	Administrative Dues (to be divided among the parties) Euro
Up to € 5,000	305€	107€
Between € 5,001 and € 9,000	535€	137€
Between € 9,001 and € 15,000	764€	183€
Between € 15,001 and € 23,000	1,070€	245€
Between € 23,001 and € 30,000	1,680€	305€
Between € 30,001 and € 45,000	2,597€	458€
Between € 45,001 and € 90,000	2,902€	535€
Between € 90,001 and € 150,000	3,666€	550€
Between € 150,001 and € 225,000	4,277€	611€
Between € 225,001 and € 300,000	5,040€	993€
Between € 300,001 and € 450,000	5,805€	1,222€
Between € 450,001 and € 500,000	7,332€	1,833€
Between € 500,001 and € 600,000	8,401€	2,597€
Between € 600,001 and € 750,000	9,929€	2,902€
Between € 750,001 and € 1,200,000	12,220€	4,277€
Between € 1,200,001 and € 1,500,000	14,206€	5,346€
Between € 1,500,001 and € 2,250,000	15,275€	5,805€
Between € 2,250,001 and € 3,000,000	19,858€	6,110€
Between € 3,000,001 and € 3,250,000	22,913€	7,637€
Between € 3,250,001 and € 4,500,000	24,440€	7,026€
Between € 4,500,001 and € 5,000,000	27,495€	7,180€
Between € 5,000,001 and € 6,000,000	30,550€	7,485€
Between € 6,000,001 and € 6,750,000	33,606€	8,096€
Between € 6,750,001 and € 7,500,000	36,661€	8,401€
Between € 7,500,001 and € 9,000,000	39,716€	8,860€
Between € 9,000,001 and € 10,000,000	44,146€	9,165€
Between € 10,000,001 and € 12,000,000	45,826€	9,929€
Between € 12,000,001 and € 13,500,000	48,117€	10,235€
Between € 13,500,001 and € 15,000,000	51,936€	10,693€

For greater amounts in dispute the fees and administrative charges shall be provided upon request. The fees and administrative dues for each dispute shall be those specifically stated in the scale range which covers the amount of the dispute. The fees and charges for lower scale ranges shall not be in addition.

The amount of the fees are in Euro and may be subject to alteration by the Court, or by the competent National Delegation, to take into account fluctuation of financial markets which may affect the value of the Euro.