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**CENTRO DE MEDIACION Y ARBITRAJE COMERCIAL
DE LA CAMARA ARGENTINA DE COMERCIO
“CEMARC”**

CEMARC ARBITRATION RULES

ANNEX - PRE-ARBITRAL INTERIM MEASURES

Introduction

Rather frequently the parties to an arbitration agreement experience the need to obtain an extremely urgent measure in order to protect their rights. However, the process of constitution of an arbitral tribunal normally takes a length of time not compatible with speedily obtaining a useful interim measure as required under the circumstances. Notwithstanding the rules set out under procedural codes applicable to independent interim measures, which are heard *ex parte* and before any complaint is filed in a legal court - provided such requests are not incompatible with the arbitral agreement - there is a gap in the arbitral system itself, which the parties rather frequently wish to fill.

In order to fill such gap, CEMARC has implemented a procedure which allows the parties to obtain interim relief within a useful timeframe without affecting the competent jurisdiction of the Arbitral tribunal as agreed between the parties.

Similar rules have been set out by some arbitral institutions, including the ICC Rules for a Pre-Arbitral Referee Procedure, the WIPO rules, and the Rules of the International Centre for Dispute Resolution (ICDR), among others.

Furthermore, the most recent specialized legal opinions have also expressed the need for such rules in national and international arbitration.

This Annex on **Prearbitral Interim Measures** is an integral part of the Arbitration Rules of CEMARC as from the date of its approval. Therefore, parties that agree to submit their discrepancies to the Arbitration Rules of CEMARC but do not accept the rules contained in this Annex must expressly provide that they shall be excluded under their agreement. If parties having agreed to submit their discrepancies to arbitration under the Arbitration Rules of CEMARC fail to make any statement in this respect, their silence shall be interpreted as acceptance of the rules set forth in this Annex, except in the event of arbitral agreements executed before the effective date of these Rules, where this Annex will be applicable only if the parties have expressly so agreed.

Article 1. Definitions

CEMARC. The Center for Mediation and Commercial Arbitration of the Argentine Chamber of Commerce.

Neutral Third Person A person selected from the List of Arbitrators of CEMARC, whose duty will be to decide on all the issues referring to a request for a pre arbitral interim measure.

Parties to an arbitral agreement. "Party" or "Parties" shall mean an individual party to the agreement or legal relationship from which the measure arises, or all the Parties thereto, collectively, including, as applicable, any one or more persons and third parties that have expressly agreed to submit to these Rules.

Article 2. Powers of the Neutral Third Person

2.1.

The Neutral Third Person shall have authority to:

- a) Order the Parties to an arbitral agreement to comply with any interim measure for purposes of securing rights or assets which are in imminent danger of being exposed to denial or destruction in such a manner that the injury could not be remedied by a subsequent arbitral award or court judgment.
- b) Order the Parties to an arbitral agreement to comply with any measure for purposes of preserving evidence or acknowledging facts or places.
- c) Order any measure that may be appropriate for the end pursued, including other than that requested by the moving party.
- d) Invite a third party that is not a party to the contract containing the arbitral agreement to perform a contractual obligation or refrain from taking actions that might cause any injuries that the interim measure is intended to prevent, making such party aware of the possible consequences that might be derived from its refusal, notwithstanding the confidentiality required under the arbitral agreement.

2.2.

The Parties may agree in writing to any amendment, extension or restriction of the powers listed in 2.1.

2.3.

The Neutral Third Person shall not be allowed to act as an arbitrator, mediator or conciliator in any controversy affecting the rights of one or both parties and bearing a relationship with the interim measure requested from it, except with the express written consent of the parties.

2.4.

The Neutral Third Person shall cease to have any authority after the arbitral tribunal is constituted, and the arbitral tribunal shall have sole authority to adopt any supplementary or ancillary measures that may be indispensable for the continued effectiveness of any prior measures that may have been ordered. The arbitral tribunal shall be deemed constituted upon acceptance of its designation by the last arbitrator.

2.5.

Upon its constitution the Arbitral Tribunal shall, in the exercise of its powers under Article 14 of the CEMARC Arbitration Rules, have unrestricted power to issue any orders that it may deem advisable in accordance with such Rules, including the amendment, adaptation, annulment or termination at any time of any measures ordered by the Neutral Third Person, and the recovery of any damages caused by the requesting party if any ordered measures are deemed unfair, and to impose monetary fines for any failure to comply with ordered measures.

Article 3. Request for Interim Measure

3.1.

When the parties to a contract including an arbitration agreement have agreed to resolve their discrepancies by arbitration under the CEMARC Arbitration Rules, they shall be deemed to have submitted to this Annex, unless expressly agreed between them that it will be excluded or amended.

3.2.

The party that requests a pre-arbitral interim measure shall file with CEMARC a writing in Spanish requesting such measure, in original and one copy. A party domiciled outside the City of Buenos Aires may send its request for an interim measure by facsimile or mail.

3.3. A request for an interim measure shall be accompanied by:

3.3.1. Receipt of payment of the administrative fee, determined pursuant to the Appendix of administrative costs in effect for arbitration proceedings.

3.3.2. Any necessary documents translated into Spanish, with the exception of very long documents, of which only the relevant portion shall be translated. Photocopies may be attached, specifying the location of the original documents.

3.3.3. Names and addresses of the parties.

3.3.4. A copy of the contract or arbitral agreement on which the request of an interim measure is based.

3.3.5. A clear request for a specific measure, a list of the reasons that warrant such measure, including a description of the right intended to be safeguarded and its likely existence, the threatened damage and the effectiveness of the requested measure to prevent the occurrence or aggravation of such damage.

3.3.6. Name, domicile, telephone number, e-mail address and any other details of the person chosen by the parties to act as Neutral Third Person, if they have reached an agreement in such respect. In such an event CEMARC may appoint a different person if such appointment is deemed advisable.

Article 4. Appointment of Neutral Third Person

4.1.

Except in the event of a prior written agreement between the parties on the appointment of a Neutral Third Person and acceptance by CEMARC of such appointment, the Neutral Third Person shall be chosen by the Board of Directors of CEMARC from the CEMARC List of Arbitrators, within the shortest possible time. The requesting party shall be immediately informed of such appointment.

4.2. The Procedure Administrator shall give the Neutral Third Person notice of its designation accompanied by any documents presented by the requesting party, upon receipt of the estimated amount to cover administrative expenses.

4.3.

Upon acceptance of its appointment, the Neutral Third Person shall submit a statement of independence similar to that required from arbitrators.

4.4.

The Neutral Third Person shall keep the Procedure Administrator regularly informed by means of copies sent to it by fax or e-mail of any communications sent to or received from the parties.

4.5.

The requesting party shall advance an estimated amount to cover the Neutral Third Person's fees, which amount shall be fixed by the Procedure Administrator. Such advance amount shall be paid within three (3) days after receipt of the relevant notice from the Procedure Administrator or Neutral Third Person and before any decision is rendered by the Neutral Third Person.

Article 5. Procedure

5.1.

Unless there are justified grounds to believe that the requested party will not comply with an order issued by the Neutral Third Person or that upon becoming aware of the requested interim measure it will cause the damage that such measure is intended to prevent, the Neutral Third Person shall give the requested party notice of the request for interim measures as promptly as possible, and establish the time limit it deems advisable under the circumstances for the requested party to appear and exercise its right of defense, accompanying any evidence on which its allegations may be based.

5.2.

As an exception, the Neutral Third Person may grant the interim measure *ex parte*, and in such case it shall be the requesting party's responsibility to give the requested party notice thereof within twenty four (24) hours after it becomes effective, accompanied by copies of any motions filed and all documents related thereto.

5.3.

After the request for an interim measure has been answered, the Neutral Third Person shall conduct the proceedings as it deems appropriate. It may summon both parties to a hearing, hold telephone conferences, examine any proposed witnesses by giving notice to both parties, and take any other actions it may deem necessary, such as inspecting premises that may be relevant in connection with the interim measure, requesting more information or clarification from the parties, and any other actions deemed advisable and which are compatible with the alleged urgency.

5.4.

Any pronouncement on the Neutral Third Person's competent jurisdiction shall be requested by the parties upon their first appearance and be finally ruled upon by the Neutral Third Person.

5.5.

After notice of the interim measure has been given, copies of any documents filed by the parties and of any communications or decisions made by the Neutral Third Person shall be furnished to the remaining parties and the Procedure Administrator.

5.6.

The Neutral Third Person may be challenged with cause once on grounds of a supervening cause, by a writing filed within 24 hours after such cause becomes known. In such an event, the challenge filed by one party and the answer thereto by the other party shall be sent to CEMARC and submitted to the decision of its Board of Directors, for the immediate appointment, if applicable, of a substitute Neutral Third Person. Before a decision is issued the challenged Neutral Third

Person may be heard by the Board of Directors. Any decisions by CEMARC regarding the challenge of a Neutral Third Person shall be final and the grounds therefore need not be stated.

5.7.

In case any of the parties fails to answer a request of information from the Neutral Third Person, obstructs or encumbers procedural progress, or fails to appear at a hearing of which it received due notice, the Neutral Third Person may carry on the proceedings and order any measure it deems advisable, and reach conclusions unfavorable to the reluctant party as it may deem appropriate.

Article 6. Order for Interim Measure

6.1.

The Neutral Third Person shall enter a decision within twenty (20) days counted as from the date of receipt of the relevant file. This time limit may be extended by CEMARC on duly justified grounds. The order will be entered in the form of a final award.

6.2.

The Neutral Third Person shall issue the order for an interim measure with a copy for each party and an additional copy for CEMARC.

6.3

The order may be subject to the fulfillment of certain conditions, such as that the demand for arbitration must be filed with CEMARC within ten (10) days after the date when the interim measure becomes effective or that adequate collateral must be previously provided to answer for damages if such interim measure is found to lack proper grounds. In such an event any delay in filing the demand for arbitration or providing collateral may result in the ordered interim measure being declared void and without effect.

6.4..

The proceedings are confidential. However, the Neutral Third Person shall send the Arbitral Tribunal copies of all the proceedings and any documents filed immediately upon receiving notice of the constitution thereof.

6.5.

The parties hereby waive any right to appear in court for purposes of challenging the order issued by the Neutral Third Person or the rejection of a requested interim measure. Both parties retain their right to request the Arbitral Tribunal, upon its constitution under the Rules of Arbitration of CEMARC, to amend, annul or lift any measure or substitute any non disposable assets thereunder on justified grounds, provided that the end pursued when ordering the measure shall not be impaired. In any event a request for a measure to be lifted, amended, ceased, terminated or annulled or any collateral replaced shall not stay the enforcement of the relevant measure.

6.6.

Upon the constitution of the Arbitral Tribunal the Neutral Third Person shall cease in its duties and may not be summoned to appear at the arbitration or any legal proceedings related to the prearbitral interim measure request as witness or in any other capacity.

6.7.

The parties hereby waive their right to bring any claims against the Neutral Third Person or CEMARC on account of any measures that may be ordered in accordance with this procedure.

7. Costs

7.1

The order granting or rejecting the interim measure shall also provide for the necessary amount to pay costs, including the Neutral Third Person's fees as determined by the Board of Directors of the *Cámara Argentina de Comercio* after prior consultation with CEMARC. The existing Scale of arbitrator fees decreased by 50% shall be applicable.

8. Supplementary Rules

8.1.

Regarding any matters not contemplated by these rules, the Arbitration Rules of of CEMARC shall apply.