



# CMAP Adjudication Rules

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**01/01/2022**



**CCI PARIS ILE-DE-FRANCE  
ENTREPRISES**

# CMAP ADJUDICATION RULES

## PRESENTATION

To resolve their disputes, parties may use mediation or arbitration. But, in parallel, they may also require an urgent decision. While they can submit an urgent application to a court, it is undoubtedly in their best interests to obtain a swift temporary solution to the issue, through a neutral and independent third party, the adjudicator.

The parties therefore avoid the situation deteriorating any further, while reserving the possibility of challenging the adjudicator's urgent decisions and seeking a ruling from a State court or arbitral tribunal to determine the extent of their obligations once and for all.

Business people themselves have confided to CMAP: "Despite our dispute, we are forced to continue to work together. So, we will immediately comply with the adjudicator's decision to avoid suspending our project, which is essential for us. And we will settle the final accounts at the end of the contract if necessary".

Among other things, the adjudication procedure can allow the contractual relationship to continue, in order to ensure timely and compliant performance of the contract whenever possible. The continuity of a number of contracts, but also the continued existence of a number of businesses, is contingent upon it.

Parties may make provision for this procedure, either by including an adjudication clause in their contract, or by signing an adjudication agreement as a precaution during its performance or, lastly, if any difficulty arises. Adherence to the CMAP Arbitration Rules also implies adherence to these Rules of Adjudication.

## 1. PURPOSE OF ADJUDICATION

- 1.1. Adjudication is a contractual procedure designed to resolve a dispute temporarily.
- 1.2. The decision is binding upon the parties until a final decision is issued by a court or an arbitral tribunal having jurisdiction to settle the dispute on the merits.
- 1.3. Where applicable, initiating the adjudication procedure shall be deemed to suspend the notice period of the termination clause.

## 2. ADOPTION OF THE ADJUDICATION RULES

- 2.1. The parties may adopt these Adjudication Rules by means of an agreement.
- 2.2. Unless otherwise expressly specified, adoption of the CMAP Arbitration Rules shall also carry acceptance of the present Adjudication Rules.
- 2.3. Any adjudication entrusted to CMAP carries acceptance of these rules by all the parties.
- 2.4. Unless otherwise expressly specified, by adopting the present Adjudication Rules or by entering into an Arbitration Agreement designating the CMAP, the parties shall be deemed to have agreed not to apply to a state court to seek an interim or protective measure.

- 2.5. However, this waiver shall not bar any application to a state court:
- in order to seek an investigative measure aiming at preserving or establishing, before any legal process, the evidence of the facts upon which the resolution of the dispute depends.
  - in the case mentioned in Article 17.4 of these rules.
  - if the measure sought, particularly in cases of conservatory attachments and court-ordered security rights, can only be ordered by a State court.
- 2.6. The provisions of paragraphs 2 and 4 of the present Article shall only apply if the parties have adhered to the CMAP Adjudication Rules or the CMAP Arbitration Rules by an agreement entered into on or after 1 January 2022.

### **3. IMPLEMENTATION**

- 3.1. Adjudication may be implemented:
- Where there is an agreement to adopt the present Rules: after the receipt by CMAP of the unilateral or joint application for adjudication and payment of the registration fee;
  - Absent an agreement to adopt the present Rules: after the receipt by CMAP of the respondent's acceptance of this procedure.
- 3.2. Where the parties have signed an agreement providing for adjudication, the procedure is implemented at the joint request of all parties or at the request of one of them.
- 3.3. Where there is no agreement providing for adjudication, it may be implemented at the request of one party who would like CMAP to propose the procedure to its co-contracting party or parties, subject to their consent.

### **4. COMMUNICATIONS AND NOTICES**

- 4.1. All communications and notices between the parties, the Secretariat of CMAP and the adjudicator shall be sent by email, regular mail or by any other means.
- 4.2. Electronic communications sent to the Secretariat shall be sent to [urgence@cmap.fr](mailto:urgence@cmap.fr) or, after registration of the application, to the address indicated to the parties by the Secretariat.

### **5. COMMENCEMENT OF THE ADJUDICATION PROCEEDINGS**

- 5.1. The matter shall be referred to CMAP by an application indicating:
- the names and addresses of the claimant or claimants, including their email addresses, and
  - where applicable, the names and addresses of their counsel
  - the names and addresses of the respondents or respondents, including their email addresses, and

- where applicable, the names and addresses of their counsel;
  - the nature of the dispute and a clear presentation of the issue or issues to be resolved.
- 5.2. The application is registered as soon as payment of the registration fee is made in accordance with the fee schedule in force on the date of the application.
- 5.3. Exhibits are provided with the application. They shall be numbered and provided with a list of all the exhibits.
- 5.4. The claimant serves a copy of their application and exhibits on the respondent, at the same time as they send or deliver their application to the Secretariat, together with evidence of this service.

## **6. REPLY**

- 6.1. Where there is no agreement providing for adjudication, the Secretariat affords the respondent a period of three days to confirm their agreement to partake in the adjudication proceedings.
- 6.2. Failure to reply within this time-limit is deemed a refusal of the procedure, in which case, the Secretariat shall close the file and inform the claimant. However, the registration fee will not be refunded by CMAP.
- 6.3. Where an agreement provides for adjudication, or if all the parties agree to the procedure, the respondent shall submit any counterclaim within eight days of the initiation of the adjudication proceedings.
- 6.4. Counterclaims are admissible within the limit of the scope of the agreement by which the parties adopted the present Rules.

## **7. ADVANCES ON COSTS**

- 7.1. As soon as it is in possession of a positive reply, or if there is an adjudication agreement, the Secretariat shall prepare an estimate of the fees and expenses payable for the adjudication proceedings and send each party an identical request to pay an advance. This advance payment is shared equally between the parties, unless they agree otherwise. They will be asked to make payment within forty-eight hours.
- 7.2. Should one of the parties fail to pay its share, another party may pay it instead within twenty-four hours, failing which, the Secretariat shall be entitled to consider the procedure inapplicable, and retain the registration fee.
- 7.3. If the adjudicator mentioned below considers that he or she requires the assistance of an expert, the same procedure shall apply for the fees of that expert.

## **8. APPOINTMENT OF THE ADJUDICATOR**

- 8.1. Following full payment of the advances, and unless the parties have agreed on the adjudicator, who will then be subject to confirmation by the CMAP Arbitration Committee, the latter shall appoint the adjudicator.

- 8.2. The Secretariat shall immediately notify the parties of this appointment.
- 8.3. Within two days of receiving the notice of this appointment, any party who wishes to challenge the appointment of the adjudicator must send the Arbitration Committee a reasoned request. The Committee will issue a decision within two days. Its decision is not reasoned and shall not be subject to any form of recourse.

## **9. INDEPENDENCE, IMPARTIALITY AND NEUTRALITY**

- 9.1. The adjudicator must be independent, impartial and neutral with respect to the parties and shall inform them, and the Arbitration Committee, of any circumstance that could, in the eyes of the parties, compromise his or her independence or impartiality.
- 9.2. The adjudicator may then only be confirmed or maintained in the mission by a decision of the Arbitration Committee.
- 9.3. From the appointment of the adjudicator through to completion of the mission, the latter shall act with complete impartiality.

## **10. CHALLENGE**

- 10.1. Any party wishing to challenge an adjudicator, for circumstances occurring or discovered after his or her appointment, shall send the Arbitration Committee a reasoned request within two days of the occurrence or discovery of the ground for the challenge.
- 10.2. After affording each party the opportunity to be heard, the Arbitration Committee shall rule on the application by a decision which is not reasoned and which shall not be subject to any form of recourse.

## **11. REPLACEMENT**

- 11.1. The adjudicator shall undertake to carry out his or her mission through to its completion.
- 11.2. In the event of inability to act, default, death or disqualification of the adjudicator, the latter shall be replaced according to the procedure applied for his or her appointment. The time-limit for issuing the decision shall be suspended from the occurrence of the event giving rise to the replacement until the new adjudicator accepts his or her mission. This acceptance shall mark the start of a new time-limit in accordance with the provisions of Article 13 below.

## **12. ROLE OF THE ADJUDICATOR**

- 12.1. The role of the adjudicator is to issue a decision settling the dispute submitted to him or her, within the agreed time limit. The adjudicator determines the timeframe and organisation of the proceedings.

- 12.2. Provided that all the parties are given the opportunity to be heard, the adjudicator may conduct on-site visits or hear third parties, particularly experts. The parties shall be invited to attend by any means.
- 12.3. The adjudicator shall rule on his or her jurisdiction and on the admissibility of the claims submitted.
- 12.4. Any offsetting between pecuniary orders that the adjudicator may issue and any debt arising prior to his or her decision must be claimed during the proceedings. Otherwise, no offsetting may be invoked to prevent enforcement of the decision.
- 12.5. The adjudicator shall rule on the sharing of costs and fees of the procedure.

### **13. DURATION OF THE ADJUDICATION PROCEEDINGS**

- 13.1. Unless otherwise agreed by the parties, the adjudicator must render the decision within twenty-eight days of the date of his or her appointment.
- 13.2. This time-limit may also be extended by the Arbitration Committee, on its own motion, or at the request of the adjudicator or any of the parties.

### **14. SEAT OF THE ADJUDICATION PROCEEDINGS**

- 14.1. Unless otherwise agreed by the parties, the adjudication procedure shall take place in Paris.
- 14.2. Whatever the seat of the procedure, the adjudicator may meet with the parties and carry out any operations in any other location.

### **15. LANGUAGE OF THE ADJUDICATION PROCEEDINGS**

- 15.1. The language of the proceedings is chosen by the parties. Failing this, the language to be used shall be chosen by the adjudicator, considering the characteristics of the dispute.
- 15.2. French or English will be used until another language has been agreed upon.

### **16. ADJUDICATOR'S DECISION**

- 16.1. The decision is not reasoned and may not give rise to any form of recourse.
- 16.2. If so requested, the adjudicator may include in the decision penalties for delay. In this case, the mission is extended until these penalties have been liquidated.
- 16.3. Where requested during the procedure, compliance with the decision may be subject to the provision of a security or bank guarantee by the other party.
- 16.4. No later than the expiration of the time-limit defined in Article 13 above, unless the parties have jointly requested an extension thereof, the adjudicator shall render his or her decision, dated and signed, to the Secretariat.

- 16.5. The Secretariat shall determine the amount of fees and expenses of the adjudication and, where applicable, ask the parties to supplement the advances previously paid, in equal shares.
- 16.6. After full payment of the fees and expenses, the Secretariat shall serve the decision on the parties, sending a copy to their counsel. Certified copies may be sent by the Secretariat to the parties and their counsel.
- 16.7. At the request of any party, the adjudicator shall correct any material error or omission to rule affecting the decision or shall interpret it. If the adjudicator is unable to rule on these requests, the CMAP Arbitration Committee shall appoint another adjudicator, at the request of any party, by means of the same procedure, and none of the parties may challenge this appointment.
- 16.8. The decision may only be made public with the consent of all the parties.

## **17. COMPLIANCE WITH THE DECISION**

- 17.1. By adhering to these rules, the parties undertake to voluntarily comply with the adjudicator's decision.
- 17.2. Voluntary compliance, even where it is unconditional, shall not deprive any party of the right to challenge the adjudicator's decision during litigation or arbitration subsequently initiated to seek a decision on the merits of the case.
- 17.3. Failure to fulfil any obligation to do or to deliver something that is set out in the decision shall be resolved by payment of damages, without prejudice to any amounts awarded as penalties for delay.
- 17.4. In the event of failure to fulfil an obligation to pay a sum of money set out in the decision, the creditor reserves the right to apply to the competent judge for a summary order to make provisional payment of the amount due and, in the case of an international dispute, to initiate any similar proceedings in a foreign country.
- 17.5. Unless otherwise stipulated, failure to fulfil an obligation set out in the decision may give rise to the application of a termination clause.

## **18. INTERPRETATION AND RULES IN FORCE**

- 18.1. CMAP, the adjudicators appointed by the latter and the arbitral tribunals constituted under its auspices shall have jurisdiction to interpret these rules.
- 18.2. These rules of adjudication shall enter in force on 1 January 2022.
- 18.3. The adjudication procedure shall be subject to the rules in force on the date it is initiated, without prejudice to the provision set forth in Article 2.6.
- 18.4. Unless otherwise expressly specified, by adopting these adjudication rules, the parties shall be deemed to have agreed to the application of the version of said rules in force when the application for an emergency decision is submitted.
- 18.5. In case of a discrepancy between the French and English versions of these adjudication rules, the French version shall prevail.

## **19. GOVERNING LAW AND DISPUTES RESOLUTION**

- 19.1. These rules and any agreements made between CMAP, the parties and the adjudicator for the purpose of organising adjudication proceedings shall be governed by French law.
- 19.2. Any dispute arising out of or in connection with these rules or any agreement made between CMAP, the parties and the adjudicator for the purpose of organising the adjudication proceedings and any dispute arising in connection with said rules and agreements shall be heard by the Judicial Court (*Tribunal judiciaire*) in Paris having jurisdiction, subject to any mandatory legal or regulatory provision conferring jurisdiction upon another State court. However, CMAP, the parties and the adjudicator may enter into an arbitration agreement for the resolution of such disputes.

## **20. LIABILITY OF CMAP AND ADJUDICATOR**

CMAP and the adjudicator it appoints shall not incur any liability in connection with the implementation of these Rules and any agreements made between CMAP, the parties and the adjudicator for the purpose of organising the adjudication proceedings, except to the extent that such a limitation of liability is prohibited by French law.

## EXAMPLES OF ADJUDICATION CLAUSES

### *1. Clause inserted in a contract:*

Any disputes arising out of or in connection with the validity, interpretation, performance or non-performance, suspension or termination of this contract shall be provisionally settled by adjudication, in accordance with the Adjudication Rules of the Centre for Mediation and Arbitration of Paris (CMAP), Paris-Ile de France Chamber of Commerce and Industry, of which the parties are cognizant and to which they adhere. After complying with the adjudicator's decision, each party shall retain the right to apply to the competent court seeking a decision on the merits.

### *2. Adjudication Agreement:*

*In the event of a dispute not covered by an adjudication clause, this procedure may nonetheless be used. The parties will then be asked to sign an agreement.*

Example of an Agreement

- Brief reminder of the cause of the dispute
- Detailed presentation of the dispute and the issues to be resolved

Whereupon:

The abovementioned parties agree to have this dispute provisionally resolved by adjudication as defined in the Adjudication Rules of the Centre for Mediation and Arbitration of Paris (CMAP), Paris-Ile de France Chamber of Commerce and Industry, of which the parties are cognizant and to which they adhere. After complying with the adjudicator's decision, each party shall retain the right to apply to the competent court seeking a decision on the merits.

Signed in:

On: Signatures:

Company X

Company Y

Represented by

Represented by

Address

Address

Possibly assisted by Mr/Ms A

Possibly assisted by Mr/Ms B

