

Criteria for appointing arbitrators in institutionalised arbitrations as approved by the Board of the Commercial Arbitration Centre of the Portuguese Chamber of Commerce and Industry on 27th September 2023

1. Key Principles

a) In cases where the appointment of arbitrators falls to the Arbitration Centre, the parties should, as far as it is reasonable, be able to participate in the process of choosing the sole or presiding arbitrator, especially in very complex or high-value cases.

b) Where a party is foreign, the Centre must consider the principle of neutrality and give the parties the opportunity to opt for a sole or presiding arbitrator who is not of the nationality of any of the parties.

c) In all the appointment processes in which it participates, the Centre must consider the objective of promoting a culture of diversity, equity and inclusion, particularly with regard to gender, age, nationality and the place where the arbitrators are based. In this regard, the Centre shall be guided by the *Equal Representation in Arbitration Pledge* (for equal opportunities for women in arbitral tribunals), to which it is a signatory, and by other initiatives disseminated within the Portuguese and international arbitration communities, with a view to implementing a diverse, equitable and inclusive arbitration community in the area where it operates.

d) In less complex and/or low value cases, arbitrators who, having the relevant experience in arbitration (namely as lawyers, secretaries or assistants to arbitral tribunals, or case secretaries within arbitral institutions), but not necessarily as arbitrators, agree to dedicate to the case with the required availability must be chosen, thus continuing to promote the swift and efficient resolution of disputes, and at the same time contributing to the broadening of the pool of arbitrators available to act in arbitrations potentially covered by the Centre's Rules and in arbitrations not institutionalised at the Centre in which it is the Centre's responsibility to intervene as an arbitrator-appointing body.

e) Regardless of the complexity and value of the dispute, the above rule should apply to at least one of the three appointees if a multi-party arbitration situation requires the Centre to appoint all the arbitrators.

f) Members of the Board of the Centre or the Board of Directors of the Portuguese Chamber of Commerce and Industry shall never be appointed upon the proposal of the Board of the Centre, but there shall be no limitation on their appointment at the will of one or more of the parties.

g) Matters of independence, impartiality and availability will be essential factors of consideration, and this rule should be extended to the assessment and acceptance of all arbitrators, even if they are nominated by the parties. In accordance with the Arbitration Rules, the Centre will assess compliance with these requirements at the time of the appointment of any arbitrator and throughout the proceedings.

h) In any case, if none of the parties object, the Centre can accept the appointment of arbitrators who declare situations which, although do not affect their independence or impartiality, contain qualifications; however, as a rule, the President shall not accept such an appointment if it faces a situation listed in the non-waivable red list of the International Bar Association's *Rules on Conflicts of Interest in International Arbitration* and, when appointing arbitrators, the President shall, unless the parties agree otherwise,– avoid choosing arbitrators with independence qualifications.

i) No arbitrator may hold office without preparing and signing a declaration of independence, impartiality and availability, in accordance with the model approved by the Arbitration Centre.

Criteria

a) Appointments shall generally be made from professionals with arbitration experience.

b) Particularly in cases involving complex issues of substantive law, professionals with scientific and/or professional experience in the branch of law that is central to the resolution of the case shall generally be chosen.

c) In arbitrations with documents in languages other than Portuguese, or where there are other working languages or especially if the language of the arbitration is not Portuguese, arbitrators who do not have a proven command of the language, defined in particular by their professional practice as arbitrators or lawyers in that language, may not be appointed

D) Arbitrators appointed by the Centre must demonstrate both proof of training in arbitration, for example by taking part in training courses run by the Centre, and of arbitration experience, namely as a lawyer, arbitrator, secretary or assistant to an arbitral tribunal, or case secretary within an arbitral institution.

2. Appointment Process

a) If an agreement on the appointment of an arbitrator or presiding arbitrator cannot be reached, the Centre's secretariat will provide the parties a period of eight days to, if they so wish and by mutual agreement, flesh out the request with references that better define the desired arbitrator profile, if this has not already been determined in advance. In the communication to the parties, the Centre may suggest that they consider factors related to the need to promote diversity, equity and inclusion, in particular the *Equal Representation in Arbitration Pledge* (for equal opportunities for women in arbitral tribunals).

b) The Secretariat must inform the President of the Centre (or whoever replaces them on the Board in situations of conflict of interest) within a maximum of five days of obtaining the information as described above, and the decision must be made within eight days at most.

c) When cases exceed the value of 5 million euros, the President of the Centre, will select in accordance with these rules and within five days of being informed by the Secretariat after the deadline in (a) above, five names to be submitted to the parties so that they can try to agree on one of them and/or so that they can provide names that any or all of them would prefer not to be named, without having to give any reasons for doing so. The President of the Centre, as specified below, will then appoint the chosen name or one from the list without objections, and, if this is not possible, will then appoint an alternative name that is not on the list.

d) When one of the parties is foreign, the five-name rule will be applied without consideration of the case value, and at least two of the five names must not be the nationality of the parties.

e) When drawing up the list of names to be submitted to the parties, the Centre shall also consider factors of diversity, equity and inclusion, in particular the *Equal Representation in Arbitration Pledge* (for equal opportunities for women in arbitral tribunals).

f) The President of the Centre will decide on the appointment of arbitrators after hearing the vice-presidents.

g) In the event of impediment for reasons of conflict of interest, the vice-presidents shall be replaced in success, and one or two members of the Board of Directors shall be heard, ensuring that the decision-maker always hear two members of the Board of Directors beforehand.