



**COMMERCIAL ARBITRATION CENTRE
PORTUGUESE CHAMBER OF COMMERCE AND INDUSTRY**

URGENT PRE-CONTRACTUAL ADMINISTRATIVE ARBITRATION RULES

(1st April 2021)

Article 1

Scope

1. Without prejudice to the general rules applicable to arbitrations for the resolution of disputes emerging from public procurement procedures, the CAC Arbitration Rules (including their appendixes) apply to arbitration proceedings related to the challenge of or the request that administrative decisions be made in the context of public works contracts, public works concession contracts, public services concession contracts, public supply contracts and public service contracts, allowing for the particulars provided for in these RULES as well as the specific nature and urgency of the proceedings.² . The requests for arbitration referred to in the previous paragraph may be made jointly with a contract challenge request when the contract has been concluded before the arbitration proceedings are commenced; should the contract be concluded during the arbitration proceedings, the respective scope may be modified up to the end of the discussion phase to include the challenge of said contract.

2. During the arbitration proceedings, the respective scope may be modified, and the invalidating effect may be withdrawn according to the applicable law.

Article 2

Arbitral tribunal

1. The arbitration proceedings referred to in Article 1 shall be decided by an arbitral tribunal to be formed according to Articles 6 et seq. of the CAC Arbitration Rules, given the following:

a) Should the arbitral tribunal be formed by a sole arbitrator, the parties are responsible for the respective appointment to be done in the Request for Arbitration and the Answer; if this is not the case, the President of the Centre shall make the appointment within three days.

b) The choice of the third arbitrator by the arbitrators appointed by the parties, provided for in Article 8 (3) of the CAC Arbitration Rules, as well as the challenge of any appointed arbitrator shall be made within three days after the acceptance of the last appointment.



The arbitrators shall accept the appointment within two days.

2. The decisions by the President of the Centre as regards the constitution of the arbitral tribunal shall be made as soon as possible and, in any case, not exceeding a 2.day period.

Article 3

Time limit and procedure

1. The arbitration proceedings referred to in Article 1 shall be commenced within the time limit provided for in the applicable law and are considered to be urgent.

2. The request for arbitration shall be filed together with the respective claim form.

3. The appointed arbitrators decide on the most adequate procedure, in light of the specific nature and urgency of the proceedings, and shall provide for a 20.day time limit for the defence and the submissions, where applicable, as well as a 5.day time limit for the remaining acts of the parties.

4. The tribunal must render its decision within one hundred and twenty days from the date of its constitution.

5. Under exceptional circumstances and at the reasoned request of the arbitral tribunal, the President of the Center may extend the time limits provided for in the previous paragraph and in the final part of Article 4(2), upon hearing the parties.

Article 4

Automatic suspensive effect

1. Where arbitration proceedings relate to the challenge of award decisions made in the context of public procurement procedures, as provided for in Article 1, whose notice has been published in the *Official Journal of the European Union*, said decisions or the execution of the respective contracts, where concluded, shall be automatically suspended once the respondent has been served, as long as the arbitration proceedings are commenced within 10 working days from the notification of the award to all tenderers.

2. During the arbitration proceedings, the suspensive effect, referred to in the previous paragraph, be lifted; the claimant may respond within 5 days and the arbitral tribunal shall decide within 10 days from the receipt of the response or, where applicable, upon establishing the facts of the case.

3. The suspensive effect is lifted in accordance with the applicable law.



Article 5

Interim measures

1. Where the automatic suspensive effect does not apply or has been lifted, the claimant may request the arbitral tribunal to adopt interim measures with a view to preventing the risk, at the time the arbitral decision is rendered, of a *fait accompli* or of preclusion to the public procurement procedure being resumed in order to determine the selected tenderer.
2. This procedure is decided upon by the tribunal, with due regard to the right of rebuttal and in light of the complexity and urgency of the situation.
3. Interim measures are refused when damages resulting from their adoption prove to be greater than those that might result from their refusal, where such damages cannot be prevented or mitigated by other measures.